85-707 (2)

Supreme Court, U.S.
FILED
OCT 10 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

CITY OF PHILADELPHIA,
Petitioner,

v.

BOROUGH OF GLASSBORO, et al.,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Petition for Writ of Certiorari
to the Supreme Court of New Jersey

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SUPREME COURT OF NEW JERSEY
A-179
September Term 1984

BOROUGH OF GLASSBORO, a Municipal Corporation of the State of New Jersey, and the BOARD OF HEALTH OF THE BOROUGH OF GLASSBORO,

Plaintiffs-Respondents,

and

BOROUGH OF CLAYTON, a Municipal Corporation of the State of New Jersey, and TOWNSHIP OF MONROE, a Municipal corporation of the State of New Jersey,

Plaintiffs-Intervenors
Respondent ,

v.

GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS and THE COUNTY OF CAMDEN,

Defendants,

and

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, and KINSLEY LANDFILL, INC.,

Defendants-Respondents,

and
THE CITY OF PHILADELPHIA,

Defendant-Appellant,

and

TOWNSHIP OF DEPTFORD,

Defendant-Intervenor
Respondent.

Argued May 7, 1985 -- Decided July 10, 1985

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 199 N.J. Super. 91 (1985)

Barbara W. Mather, City Solicitor, a member of the Pennsylvania bar, argued the cause for appellant (Tomar, Parks, Seliger, Siminoff & Adourian, attorneys; Steven K. Kudatzky and James Katz, of counsel and on the brief).

Joseph F. Lisa argued the cause for respondents Borough of Glassboro, etc., et al. and intervenors-respondents Borough of Clayton, etc., et al.

Paul H. Schneider, Deputy Attorney General, argued the cause for respondent New Jersey Department of Environmental Protection, et al. (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Michael R. Cole, First Assistant Attorney General, of counsel).

Timothy S. Haley argued the cause for intervenor-respondent Township of Deptford (Gordon & Gordon, attorneys).
Charles C. Carella submitted a brief on behalf of respondent Kinsley landfill, Inc. (Carella, Byrne, Bain & Gilfillan, attorneys; Mr. Carella and Brendan T. Byrne, of counsel and on the brief).

The opinion of the Court was delivered by POLLOCK, J.

On this appeal, the City of Philadelphia (Philadelphia) asks us to review a preliminary injunction closing the Kinsley Landfill in Deptford Twonship, Gloucester County. Seven months ago, we denied Philadelphia's request for a stay of the injunction. 98 N.J. 186 (1984). Thereafter, a single United States Supreme Court Justice also denied Philadelphia's request for a stay.

In the present appeal, as in its former application, Philadelphia contends that the injunction, which permits certain New Jersey municipalities to use the landfill as an emergency health measure, imposes an impermissible burden on interstate commerce. Specifically, Philadelphia con-

tends that the closure order violates the Commerce Clause of the federal constitution, U.S. Const. art. I, § 8, cl. 3. Impressed with the public health emergency that confronted the trial court, the Appellate Division affirmed the injunction. 199 N.J. Super. 91 (1985). We affirm the judgement of the Appellate Division.

I

Kinsley Landfill, Inc. (Kinsley) is a privately-owned landfill that is subject to regulation by the New Jersey Department of Environmental Protection (DEP) as to environmental concerns and by the Board of Public Utility Commissioners (BPU) as to economic matters. For approximately twenty-five years, Kinsley has operated as a major solid waste disposal site in souther New Jersey. On September 26, 1980, DEP issued a permit authorizing the dumping

of solid waste at the landfill to a height of 164 feet. By the spring of 1984, garbage had accumulated nearly to the approved limit. Virtually all the solid waste generated within.
New Jersey that is deposited at the landfill emanates from Gloucester, Camden, and Salem counties (hereinafter described sometimes as "the three counties").

On October 11, 1984, Kinsley notified its customers that it would soon reach the 164-foot limit and that it would close on October 28, 1984. Shortly thereafter, the Borough of Glassboro (Glassboro), one of the municipalities disposing of of solid waste at Kinsley, instituted this action to enjoin both the closure of the landfill and the use of the landfill for solid waste originating in Philadelphia. The defendants included Philadelpia, Deptford

Township, and DEP. Various other parties were joined or have intervened in the proceedings.

The trial court conducted hearings over several days on Glassboro's request for a temporary restraining order. On October 26, 1984, two days before the announced closure of the landfill, the court rendered its decision and issued the order. The court found that Kinsley was rapidly approaching the end of its useful life and that it should be closed. Although it recognized that continued use beyond the current design threatened the health and safety of the citizens of Deptford, the court found that immediate closure would cause irreparable harm to the citizens of Glassboro and certain other municipalities. The court concluded that the most equitable response was to restrain

the closure and direct Gloucester County to establish "a reasonable site for alternate solid waste disposal." The court reserved decision on the application for restraints against Philadelphia.

Pursuant to a suggestion made by Kinsley's engineer, the court ordered Kinsley to submit to DEP engineering plans for an additional sixteen-foot lift, one that would expand the height of the landfill to 180 feet. In accordance with the court order, DEP reviewed the plans and submitted a report for the court's consideration in connection with the application for a preliminary injunction.

The report cited, among other things, that no acceptable alternate landfill existed in New Jersey for the disposal of solid waste dumped at Kinsley. Consequently, the three counties should

expeditiously site and implement landfills within their respective borders. Although DEP procedures for opening a landfill ordinarily take two years, DEP would process the applications on an emergent basis, and the counties could open alternate landfills by November 1985. In the interim, Kinsley could accommodate a sixteen-foot vertical expansion.

At the hearing on the application for the order under review, the court accepted the DEP report in its entirety and, consistent with that report, made certain findings. We accept those findings and the inferences that the trial court drew from them as supported by substantial credible evidence. Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974). Most importantly, the trial court found that at then current levels of dumping at Kinsley,

the additional capacity created by the sixteen-foot lift would be reached in three and one-half months. Most of the solid waste formerly dumped at the landfill emanated from Pennsylvania, with Philadelphia alone providing 53.9% of the 4,738,783 cubic yards of waste dumped in the period from July 1, 1983 to May 31, 1984. According to waste flow registration statements filed by Philadelphia with DEP, this volume represents a dramatic increase over Philadelphia's prior use of the landfill. In 1981-82, for example, Philadelphia disposed of 784,770 cubic yards of waste at Kinsley, and, in 1982-83, this figure grew to 1,136,785 cubic yards. Accordingly, the trial court found that the disposal of waste by Philadelphia at the landfill had "continued to escalate at an alarming rate unlike those districts subject to inter-district agreements."

Furthermore, since 1980, DEP had required that Philadelphia, like the adjoining New Jersey counties, sign an interdistrict waste flow agreement with Gloucester as a condition of continued use of the Kinsley Landfill. Nowwithstanding DEP's urging, Philadelphia had not executed an inter-district agreement, the basic instrument under the Solid Waste Management Act, N.J.S.A. 13-1E-1 to -38, for planning for the disposal of solid waste generated outside a district such as Gloucester County. Rejecting one of Philadlephia's contentions, the court found that Gloucester County had negotiated with Philadelphia in good faith.

Also consistent with the DEP report, the trial court found that Philadelphia, unlike the municipalities in the tri-county area, could accommodate the closure of the

Kinsley Landfill. Even when Kinsley was operating under a DEP permit, Philadelphia sent half of its garbage elsewhere. Philadelphia not only enjoys access to alternative sites, but also to equipment for routing its solid waste elsewhere. In contrast, the tri-county municipalities do not own the trucks, transfer stations, or resources necessary for dumping at more distant sites. As the Appellate Division recited, fifty-nine municipalities in the tri-county area had no alternative to Kinsley. 199 N.J. Super. at 100.

In view of these findings, the trial court decided that the most equitable result was to exclude from Kinsley solid waste originating from Philadelphia and from other municipalities, both within and without New Jersy. The result of that decision was to extend the life of the

landfill for one year, the time needed by the three counties to establish alternative sites.

Consequently, on November 13, 1984, the court issued a preliminary injunction providing, in effect, that:

(1) Municipalities in Gloucester, Camden, and Salem counties could continue to use Kinsley to dispose of solid waste for an additional sixteen-foot lift. The three counties must proceed immediately, within their respective borders, to establish landfills, which are to be operational by November 1985. (As the Appellate Division noted, 199 N.J. Super at 97, two Gloucester municipalities must exhaust the capacity at their municipally-owned landfills before

they can resort to Kinsley. See N.J.A.C. 7:26-6.5h, 2, 3, 4.)

(2) Kinsley was to cease accepting solid waste generated within Philadelphia, other Pennsylvania communities, and any other district outside of Gloucester County that is not subject to an interdistrict agreement.

(3) All communities using Kinsley should be required "to maximize" their recycling efforts, including the adoption of mandatory recycling ordinances and curbside pickup.

(4) When the sixteen-foot vertical expansion was reached, Kinsley was to close, at which time waste was to be redirected to the landfills. This was expected to occur by November 1985.

(5) Kinsley was to be closed for all sludge disposal on March 15, 1985.

Understanding the legal significance of the preceding facts begins with the recognition that New Jersey is in the throes of a solid waste crisis. In our earlier decision reviewing the injunctive order, we summarized the background of that crisis:

> The Order that is the subject of these applications must be examined in the light of the critical Statewide concerns relating to solid waste disposal, noted as early as 1974 by this Court in Southern Ocean Landfill v. Mayor of Ocean Tp., [sic] 64 N.J. 190, 193, and again, eight years later, in A.A. Mastrangelo, Inc. v. Environmental Protection Dep't, 90 N.J.

666 (1982). In particular, the Order must be viewed within the framework of N.J.S.A. 13:1E-1 to -38, the Solid Waste Management Act. This Act was passed by the Legislature in recognition of the fact that the management of solid waste disposal in New Jersey had consisted largely of haphazard, random, uncoordinated activities undertaken with little, if any, regard for regional planning and coordination. N.J.S.A. 13:1E-2a. In order to protect the public health, safety, and welfare, the Act establishes the policy of New Jersey to provide a coordinated approach to solid waste disposal by establishing 22 solid waste management districts (consisting of 21 counties and the Hackensack Meadowlands district), each of which is charged

with the responsibility of developing and implementing comprehensive solid waste management plans that meet solid waste disposal needs. N.J.S.A. 13:1E-2b(2).

[98 N.J. at 191-92.]

* * * * * * * * *

The Solid Waste Management Act contemplates that when solid waste is transported into a solid waste management district it must be pursuant to an interdistrict agreement. N.J.S.A. 13:1E-21b(3). According to the Department, a district cannot effectively plan for the solid waste disposal facilities that are needed to meet waste to meet waste disposal needs unless it knows how much waste will be entering the district from various sources.

[Id. at 192-93.]

The Appellate Division likewise recognized the importance of planning and the vital role of interdistrict agreements in gaining control of the solid waste crisis. 199 N.J. Super. at 97-98. Nonetheless, that court did not rest its decision on the absence of an agreement with Philadelphia, id. at 103, but on the existence of an "imminent public health and welfare crisis," id. at 99. In affirming the order permitting the temporary use of the landfill to avert a public health crisis, the Appellate Division concluded that the trial court had struck a proper balance of the equities. Id. at 100. It remains for us to determine whether the order under review is consistent with the mandate of the Commerce Clause.

II

The Commerce Clause provides simply that: "The Congress shall have Power * * * to regulate Commerce * * * among the States." When Congress has not exercised its preemptive power, many subjects affecting interstate commerce, particularly those of local concern, remain subject to state control. See Sporhase v. Nebraska, 458 U.S. 941, 954, 73 L.Ed.2d 1254, 1264 (1982); Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 349-50, 53 L.Ed.2d 383, 398-99 (1977). Although Congress has enacted legislation pertaining to solid waste, 42 U.S.C.A. § 6901 to -87, it has not preempted, but rather encouraged, state regulation of interstate waste. See Philadelphia v. New Jersey, 437 U.S. 617, 620 n.4, 57 L.Ed.2d 475, 479 n.4 (1978).

When confronted with congressional silence, states remain constrained, nonethe-

less, by the "dormant" character of the Commerce Clause. Wilson v. Black Bird Creek Marsh Co., 27 U.S. 412 (2 Pet 245) (1829); see G. Gunther, Constitutional Law 278-80 (1975). In its dormant state, the Commerce Clause acts as a "self-executing limitation on the power of the States to enact laws imposing substantial burdens on [interstate] Commerce." South Central Timber Dev., Inc. v. Wunnicke, 467 U.S. ____, 81 L.Ed.2d 71, 76 (1984); Hughes v. Oklahoma, 441 U.S. 332, 326, [sic] 60 L.Ed.2d 250, 255-56 (1979).

As a general proposition, a state regulation will be sustained if it is rationally related to a legitimate state end and if the state interest in enforcing the regulation outweights the burden on interstate commerce. L. Tribe, American Constitutional Law § 6-5, at 326 (1978).

Thus, Commerce Clause analysis often involves balancing the national need for the free flow of trade with the local concern of individual states to protect the health, safety, and welfare of their citizens. Nowhere is that balance more critical than in weighing the national interest against the substantial local interest in the proper disposal of solid waste. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 471, 473, 66 L.Ed.2d 659, 673, 675 (1981), reh'g denied, 68 L.Ed.2d 222 (1982).

At the outset, we must determine whic of two standards applies to our appraisal of the effect of the injunction on interstate commerce. The first standard, applicable when a state regulation manifests simple economic protectionism, results in a virtual per se rule of invali

dity. Minnesota v. Clover Leaf Creamery Co., supra, 449 U.S. at 471; Philadelphia v New Jersey, supra, 437 U.S. at 624, 57 L.Ed.2d at 481. Economic protectionism has been proved by establishing that a statute has either a discriminatory effect, Hunt v. Washington Apple Advertising Comm'n, supra, 432 U.S. 333, 53 L.Ed.2d 383, or a discriminatory effect, Philadelphia v. New Jersey, supra, 437 U.S. 617, 57 L.Ed.2d 475. The initial burden to demonstrate discrimination rests with the party attacking the state regulation. Hughes v. Oklahoma, supra, 441 U.S. at 336, 60 L.Ed.2d at 262. Once discrimination is shown to exist, however, the burden falls on the state to justify the regulation both in terms of the local benefits it provides and the unavailability of nondiscriminatory alternatives. Id. (quoting Hunt v.

Washington Apple Advertising Comm'n supra, 432 U.S. at 353, 53 L.Ed. at 400); see Sporhase v. Nebraska, supra, 458 U.S. at 957, 73 L.Ed.2d at 1266-67; U.S.A. Chamber of Commerce v. State, 89 N.J. 131, 162 (1982).

A second, more flexible, standard aplies when a state regulation advances legitimate local interests and does not facially discriminate against interstate commerce:

> Where the statute regulates evenhandedly
>
> > to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.
>
> [Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 25 L.Ed. 2d 174, 178 (1970)

(citation omitted.)

See Minnesota v. Clover Leaf Creamery Co., supra, 449 U.S. at 471; Philadelphia v. New Jersey, supra, 437 U.S. at 624. We discern some overlap in the application of the two standards. In determining whether a state regulation is discriminatory in purpose or effect, for example, we consider some of the same factors involved in determining whether a local concern is genuine and whether the regulation operates evenhandedly. Our initial task is to determine whether the injunction is, as Philadlephia contends, "blatantly discriminatory and protectionist on its face and in its effects," or whether it operates evenhandedly to advance the legitimate local interests of the three counties. See Hughes v. Oklahoma, supra, 441 U.S. at 336, 60 L.Ed.2d at 262.

In making that determination, we must consider the purpose of the injunction and its effect on interstate commerce. Its purpose is to permit emergency access to Kinsley for the protection of the health, safety, and welfare of a limited number of municipalities in the tri-county area that have no alternative means of disposing of solid waste. Although the injunction permits those municipalities to avail themselves of Kinsley, they may do so only on an emergent basis and only by assuming, together with the three counties, substantial obligations. For example, the three counties must establish alternative sites within a year, a timetable that requires accelerated efforts by both DEP and those counties. In addition, all municipalities using Kinsley must make maximum efforts to recycle disposable waste, including curb-

side pickup. Furthermore, the BPU has increased the "tipping fees" (the amount paid to dump) at Kinsley from $2.85 to $10 per-cubic-yard to accommodate the costs of an environmentally-sound closure, estimated at $7.47 per-cubic-yard. See BPU Interim Order, Docket No. 8411-1205, In re matter of the Petition of Kinsley's Landfill, Inc. (Jan. 7, 1955). Thus, the municipalities have incurred a three-fold cost increase to continue dumping at Kinsley. Stated plainly, the purpose of the injunction is to borrow a few extra months from a virtually exhausted resource, a landfill that would otherwise be closed. In effect, the injunction treats Philadelphia like the thirteen New Jersey counties that formerly used Kinsley.

To support its argument that the injunction discriminates against interstate

commerce, Philadelphia relies on Philadelphia v. New Jersey, supra, 437 U.S. 617, 57 L.Ed.2d 475, in which the United States Supreme Court reviewed a statute that, with narrow exceptions, excluded from New Jersey all out-of-state waste. The effect of the statute was to prevent Philadelphia from sending its garbage anywhere in New Jersey. In a divided opinion, the Supreme Court found that the statute violated the Commerce Clause. 437 U.S. 617, 57 L.Ed.2d 475. Although New Jersey defended the statue as an environmental protection measure, Justice Stewart declared that whether the statutory objective was to reduce waste disposal costs or to protect open land from pollution, the State could not achieve its objective by discriminating against interstate commerce. Id. at 626-27, 57 L.Ed.2d at 483. He

observed, however, that a statute regulating the flow of articles of commerce might be upheld when there was "some reason, apart from their origin, to treat them differently." Id. at 627, 57 L.Ed.2d at 433; cf. United Bldg. & Constr. v. Major & Council of Camden, 465 U.S. 208, ___, 79 L.Ed.2d 249, 261-62 (1984) (under Privilege and Immunities clause, municipal may discriminate against out-of-state residents on its construction projects "where there is a 'substantial reason' for the difference in treatment").

Consistent with that observation, several reasons compel the conclusion that the place of origin is unrelated to the injunction against the continued dumping of Philadelphia garbage at Kinsley. Here, we are not confronted with a ban on all out-of-state garbage as we were in

Philadelphia v. New Jersey. Thirteen New Jersey counties, which account for approximately 6.1% of the waste disposed of at Kinsley, also are excluded. Furthermore, that Philadelphia, as the biggest former customer, may feel the burden more heavily does not vitiate the substantial interest of New Jersey in protecting the health of Salem, Gloucester, and Camden counties. Minnesota v. Clover Leaf Creamery Co., supra, 449 U.S. at 473, 63 L.Ed.2d at 678. If no state line existed between New Jersey and Pennsylvania, we would uphold the injunction as a valid exercise of the powers of a court of equity. As an equitable remedy, the decree merely preserves space at Kinsley for certain municipalities that, as a practical matter, do not have access to other landfills, while remitting other municipalities, including

Philadelphia, to alternative sites. Additional garbage from any source, either within or outside New Jersey, will displace space at Kinsley needed to avert a health crisis in the three counties. In avoiding that crisis, the injunction also effectuates the legislative and regulatory scheme for the disposal of solid waste.

The mere fact that Philadelphia is in another state should not imbue it with greater rights than it would possess if it were located in New Jersey. The Commerce Clause was intended as a shield against discrimination, not as a sword to obtain a preference. We conclude that the injunction is not discrimatory in purpose or effect. It is plainly not a mere protectionist measure and, therefore, does not constitute a per se violation of the Commerce Clause. Philadelphia v. New Jersey, supra, 57 L.Ed.2d at 481.

It remains to determine whether the state interest in enforcing the injunction outweighs the burden on interstate commerce under the Pike test. Pike v. Bruce Church, Inc., supra, 397 U.S. at 142, 25 L.Ed.2d at 178. That test, like the per se test, begins with a consideration of the legitimacy of the local interest sought to be protected. One would be hard pressed to discover a more legitimate state interest than that of protecting the health of the citizenry, an interest that can manifest itself in the conservation of natural resources such as water, Sporhase v. Nebraska, supra, 458 U.S. at ___, 73 L.Ed.2d at 1265, or in the preservation of diminishing sources of waste disposal, Minnesota v. Clover Leaf Creamery Co., supra, 449 U.S. at 471, 66 L.Ed.2d at 673.

The threshold question arises, nonetheless, whether the injunction opera-

tes evenhandedly. Pike v. Bruce Church, Inc., supra, 397 U.S. at 142, 25 L.Ed.2d at 178. In answering that question, we look to the nature of the local problem and the character of the state response. See Sporhase v. Nebraska, supra, 485 U.S. at 954-56, 73 L.Ed.2d at 1265-66. In Sporhase, for example, a Nebraska statute required a permit issued by the Department of Water Resources to transport ground water from Nebraska to another state. Under the statute, the director of the department would issue a permit if he found the withdrawal of the ground water to be "reasonable, not contrary to the conservation and use of ground water, and not otherwise detrimental to the public welfare." Even after making those findings, however, a permit would not issue unless the receiving state granted recipro-

cal water rights to Nebraska. Id. at 944, 73 L.Ed.2d at 1258.

The Court invalidated the reciprocity requirement because it imposed as absolute ban that was not narrowly tailored to serve the state's legitimate interest in water conservation and preservation. 458 U.S. at 957-58, 73 L.Ed.2d at 1266-67. It sustained as evenhanded, however, the statutory delegation of authority to the Nebraska Department of Water Resources (Department) to deny permits to out-of-state applicants. Id. at 955, 73 L.Ed.2d at 1265. Although the effect of the statute was to allow the Department to reserve water for use in Nebraska, other restrictions on intrastate use demonstrated that the genuine purpose of the statute was not to protect the state's economy, but to conserve inadequate ground water supplies.

Id. at 954-56, 73 L.Ed.2d 1265-66. In short, the water conservation program operated evenhandedly by distributing burdens, albeit different ones, on in-state and out-of-state users.

In addition to finding that the intrastate restrictions demonstrated the genuineness of the local purpose, the Court found that "a State that imposes severe withdrawal and use restrictions on its own citizens is not discriminating against interstate commerce when it seeks to prevent the uncontrolled transfer of water out of the State. An exemption for interstate transfer would be inconsistent with the ideal of evenhandedness. Id. at 956, 73 L.Ed.2d at 1265. Noting that Congress had not expressed a contrary view, the Court stated it was "reluctant to condemn as unreasonable measures taken by a State to

conserve and preserve for its own citizens this vital resource in times of severe shortage." Id., 73 L.Ed. at 1266.

In considering the lessons of Sporhase, we accept the trial court's finding that the tri-county municipalities need access to Kinsley to avert a health crisis. Kinsley is the only feasible place in which the tri-county municipalities can dispose of their solid waste. Given that need and the decreasing number of landfills, Kinsley may properly be characterized as a vital resource in a time of severe shortage. See Id at 956, 73 L.Ed.2d at 1266. It was that need that led the trial court to foreclose municipalities outside the tri-county area, whether within or outside New Jersey, from continuing to dump at Kinsley. As the trial court found, garbage would accumulate in the streets of Salem, Gloucester, and

Camden counties if those municipalities could not use the additional sixteen-foot lift. Moreover, as previously indicated, the injunction imposes substantial obligations on the tri-county municipalities and on Salem, Gloucester and Camden counties. Thus, like the water conservation scheme in Sporhase, the injunction effects an evenhanded distribution of its burdens.

We also find instructive four factors considered by the United States Supreme Court in sustaining the conservation measures in Sporhase v. Nebraska, supra, 458 U.S. at 956-57, 73 L.Ed.2d at 1266. The first consideration is whether the restriction represents an exercise in economic protectionism or of the police power. As previously set forth, we find the injunction to be a measured response to a genuine local health problem.

The second consideration is the existence of a legal expectation that the use of a landfill such as Kinsley might be restricted. Here, state and local legislators have created the legal expectation that state and local governments will manage the disposal of solid waste. See Central Iowa Refuse Systems, Inc. v. Des Moines Metro Solid Waste, 715 F.2d 419 (8th Cir. 1983) (restraint in waste flows essential to development of comprehensive waste flow plan); compare N.J.S.A. 13;1E-2 (each county designated as a solid waste district, and DEP is to regulate and supervise the disposal of solid waste) with 42 U.S.C.A. §§ 6901-87 (federal legislation contemplates state imposed controls on waste flow). To manage solid waste, a state must have the power to regulate and even to close landfills. The denial of

continuing recourse to a landfill that has reached the limits imposed by its DEP permit should be well within the reasonable expectations of former users such as Philadelphia.

The third factor in Sporhase emanated from Nebraska's claim of ownership to the ground water. Justice Stevens acknowledged that the state's claim to public ownership, although not absolute, could "support a limited preference for its own citizens in the utilization of the resource." 458 U.S. at 956, 73 L.Ed.2d 1266. Here, Kinsley is not publicly owned, but it is a public utility, N.J.S.A. 48:2-13; N.J.S.A. 48:13A-1 to -12, and must operate in the public interest, N.J.S.A. 48:13A-1. Hence, New Jersey's interest in the use of the landfill is akin to Nebraska's interest in the use of its ground water.

The final consideration suggested by Sporhase is the extent of the state's efforts to conserve the resource. At Kinsley, the availability of the additional lift is not the result of happenstance, but of New Jersey's conservation efforts. In recent years, no problem in New Jersey has attracted more governmental attention than has solid waste management. Since 1974, this Court has urged other branches of government to address solid waste as a state-wide problem. Southern Ocean Landfill v. Mayor of Ocean Township, 64 N.J. 190, 193. Through the Solid Waste Management Act, N.J.S.A. 13:1E-1 to -38, the Legislature has created a statutory frame-work that enables state and local governments to solve the crisis. Interdistrict agreements comprise a key component of solid waste management.

Significantly, the trial court found that the solid waste generated by Camden and Salem counties, which executed such agreements, remained constant. In contrast, Philadelphia, which did not sign an interdistrict agreement, tripled the amount of garbage it dumped at Kinsley from 1981 to 1984. Thus, state supervision and county cooperation imbued Kinsley, although privately owned, with "some indicia of a good publicly produced and owned in which a State may favor its own citizens in times of shortage." Sporhase v. Nebraska, supra, 458 U.S. at 957, 73 L.Ed.2d at 1266. We conclude that the injunction may fairly be viewed as a reasonable measure taken to resurrect Kinsley for former users that have no other place to dump their garbage.

In reaching that conclusion, we remain cognizant that only in limited circumstan-

ces may a state accord preferential treatment to its own citizens. We are aware also that the loss of access to Kinsley will impose added costs on Philadelphia. Were it not for the injunction, however, the landfill would be closed not only to former customers outside the tri-county area, such as Philadelphia, but also to those within the three counties. So considered, the effect of the injunction on interstate commerce is incidental. Philadelphia v. New Jersey, supra, 437 U.S. at 624, 57 L.Ed.2d at 482; Pike v. Bruce Church, Inc., supra, 397 U.S. at 142, 25 L.Ed.2d at 178.

Even if the effect could be characterized as more than incidental, the burden falling on Philadelphia would not be "clearly excessive." Pike v. Bruce Church, Inc., supra, 397 U.S. at 142, 25

L.Ed.2d at 178. Philadelphia's lost access to an exhausted landfill must be contrasted with the disastrous results that its continued use would visit on the tri-county municipalities. With respect to the economic impact of the closure, the Appellate Division observed that Philadelphia, a city of Approximately 1.7 million people with a solid waste disposal budget of approximately $4,000,000, would suffer much less than the 59 municipalities in the tri-county area. 199 N.J. Super. at 100.* The

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* The Appellate Division of the New Jersey Superior Court actually found that the closing of Kinsley would increase the City of Philadelphia's Streets Department budget by 5% of $91 million dollars or $4 million in the first year and not that the Streets Department's existing budget was $4 million. Glassboro v. Gloucester County Board of Freeholders, 199 N.J. Super. 91, 100, 488 A.2d 369, 567 (1985). (Footnote supplied.)

estimated increase in Philadelphia's budget for solid waste disposal is 5% for the first year following Kinsley's closure and 2% thereafter. Id. By contrast, the solid waste disposal budget of Glassboro, a municipality of some 14,500 people, "could excalate from $100,000 to $1,000,000 per year * * *, * and the cost to Camden County, with a population of approximately 500,000 people, could increase from $3,000,000 to $12,000,000 annually. Id.

The closure of Kinsley, however, involves more than cost considerations. It would force the tri-county municipalities to embark on a crash garbage disposal program, one that would include, for example, siting and establishing transfer stations to store garbage temporarily, pending delivery to a permanent site. Such a program, as formidable and costly as it

would be, would become obsolete in one year, when the new dump sites become operative. Furthermore, as the Appellate Division stated, "[s]ome towns, such as Clayton, Elmer, and Woodstown had no alternative to their present private-hauler service if Kinsley were closed without access to an alternate local source. The private haulers would simply close down." Id. Thus, practical considerations demonstrate that the task confronting the tri-county municipalities would be not merely difficult, but virtually impossible to perform. Such considerations confirm that the burden on Philadelphia is not excessive.

The final inquiry in evaluating a state conservation program under Pike is whether the local interest can be achieved as well with a lesser impact on interstate

commerce. Pike v. Bruce Church, Inc., supra, 397 U.S. at 142, 25 L.Ed. 2d at 78. Put differently, the question is whether a less discriminatory injunction might adequately protect the health of the citizens of southern New Jersey. See Hughes v. Oklahoma, supra, 441 U.S. at 336, 60 L.Ed.2d at 262.

In this regard, Philadelphia argues that all former users should be allowed continued access at proportionately reduced levels. At first glance, that argument appears to be fair. On closer examination, however, it becomes apparent that what is superficially fair is, in reality, a request for a preference. As stated previously, were it not for the emergent need of the three counties, Kinsley would be closed to all users. Use of Kinsley has been restricted for a limited time to avert

a public health crisis in southern New Jersey. Moreover, Philadelphia has alternative sites to dispose of its garbage, albeit ones that impose increased costs on the City. In contrast, the tri-county municipalities do not have access to alternative sites, to trucks, or to what may be of greater importance, to transfer stations.

The threat to local health, which the trial court described as raising a "horrendous specter," could not be averted by a less-restrictive injunction. See Sporhase v. Nebraska, supra, 458 U.S, at 957, 73 L.Ed.2d at 1267; Hughes v. Oklahoma, supra, 441 U.S. at 336, 60 L.Ed.2d at 261-62; Hunt v. Washington Apple Advertising Comm'n, supra, 432 U.S. at 353, 53 L.Ed.2d at 400. Based on the record before us, a plan that accorded to

Philadlephia access, even if proportionately reduced, would foreshorten the life of the landfill. Such a plan would not merely be a less effective means of obtaining time for the development of alternative sites; it would be ineffective. See Minnesota v. Clover Leaf Creamery Co., supra, 459 U.S. at 464, 473-74, 66 L.Ed.2d at 669, 675. So viewed, Philadelphia's demand that the tri-county municipalities incur substantial costs for a short-term solution is not so much a request for a less discriminatory alternative as it is an attempt to place an excessive burden on those municipalities. The ideal is evenhandedness. Sporhase v. Nebraska, supra, 458 U.S. at 956, 73 L.Ed.2d at 1265. That the injunction operates evenhandedly is apparent form the burden it places on the three counties to develop permanent alternatives.

Finally, Philadelphia contends that the trial court should have granted its motion filed on November 15, 1984, two days after the issuance of the injunction, in which the City sought approval of a second lift, one that would extend the height of the landfill by an additional sixteen feet. At a hearing on October 23, 1984, however, a DEP expert expressed substantial reservations about the environmental acceptability of a second lift. The trial court found the testimony of DEP's expert to be more persuasive than the testimony of Philadelphia's subsequently produced witnesses. That finding is supported by substantial credible evidence in the record, and we adopt it. Rova Farms Resort v. Investors Ins. Co., supra, 65 N.J. at 483-84. Before us, Philadlephia has moved to supplement the record with the

deposition testimony of the Environmental Program Administrator of the Gloucester Planning Department and with affidavits from other persons. the deposition of the administrator is incomplete - as of the date of oral argument, he had not been cross-examined - and we must decide the present matter on the record as established before the trial court. Consequently, we deny Philadelphia's motion to expand the record.

The judgment of the Appellate division is affirmed.

Chief Justice Wilentz and Justices Clifford, Handler, O'Hern, Garibaldi and Stein join in this opinion.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1440-84T5

GLASSBORO, et al,
Plaintiffs,
v.

GLOUCESTER COUNTY BOARD OF
CHOSEN FREEHOLDERS, NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, KINSLEY LANDFILL, INC.,
THE CITY OF PHILADELPHIA and
THE COUNTY OF CAMDEN,
Defendants,

and

TOWNSHIP OF DEPTFORD,
Defendant-Intervenor.

Argued: December 17, 1984 - Decided:
February 15, 1985.

Before Judges King, Deighan and Bilder.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County.

Tyler Wren of the Pennsylvania Bar, admitted pro hac vice, argued the cause for appellant City of Philadelphia (Tomar, Parks, Seliger, Simonoff & Adourian, attorneys; Steven Kudatsky, of counsel and on the brief).

Joseph F. Lisa argued the cause for

respondents Borough of Glassboro, Borough of Glassboro Board of Health, Borough of Clayton and Township of Monroe.

Paul H. Schneider, Deputy Attorney General, argued the cause for respondents New Jersey Department of Environmental Protection and Commissioner Robert E. Hughey (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Michael R. Cole, First Assistant Attorney General, of counsel).

Bruce C. Hasbrouck argued the cause for respondent County of Gloucester.

Timothy S. Haley argued the cause for respondent Deptford Township (Gordon and Gordon, attorneys).

Edward J. Egan argued the cause for respondent Kinsley Landfill.

Richard Hluchan argued the cause for respondent Hancock Waste (Sterns, Herbert & Weinroth, attorneys).

The opinion of the court was delivered by

KING, P.J.A.D.

In this case we must decide if a judicial order, based on emergency sanitation concerns, which bars any person or entity located outside the Southern New Jersey tricounty area of Salem, Gloucester

and Camden Counties from using a privately-owned, state-regulated landfill (Kinsley) violates the Commerce Clause of the federal constitution. U.S. Const. Art. I, §8, c. 3[1].

We previously denied leave to appeal this interlocutory order of Judge DeSimone of the Law Division and also denied a stay of his November 13, 1984 order. Our Supreme Court and the United States Supreme Court have also denied stays of this order. However, on December 7, 1984 our Supreme Court granted the City of Philadelphia's motion for leave to appeal, on the merits, remanded the matter to us for disposition of the appeal on the merits, and ordered

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[1] "The Congress shall have power ... to regulate Commerce... among the several states."

that the appeal be accelerated. Glassboro v.Gloucester Cty. Bd. of Chosen Freeholders, 98 N.J. 186 (1984). Upon receipt of the remand order, dated December 17, 1984, we immediately scheduled and heard oral argument on December 17, 1984. Unfortunately, we did not receive the transcript of the proceedings before Judge DeSimone until February 7, 1985. Thus any more expeditious decision of this appeal was frustrated.

The order for preliminary injunction under appeal, executed by Judge DeSimone on November 13, 1984, provided in substance that

1. The Counties of Salem, Gloucester and Camden must proceed immediately to designate sites and create landfills within their respective borders which must be operational by November 1985.

2. The Kinsley Landfill in Deptford Township, Gloucester County must cease accepting solid waste generated within the City of Philadelphia, any other Pennsylvania communities and "other out-of-district [Gloucester County] solid waste not subject to interdistrict agreements." This provision effectively excluded all solid waste originating outside of Salem, Gloucester and Camden Counties, whether from New Jersey, Pennsylvania or elsewhere.

3. All municipalities within the three counties in New Jersey were ordered to maximize recycling efforts.

4. The Kinsley Landfill was ordered closed when the capacity of an emergency 16-foot vertical expansion allowed by the court was reached. This was anticipated in November 1985.

5. Kinsley Landfill was to be closed for all sludge disposal on March 15, 1985.

Several subsequent applications by Philadelphia for modification of this order were denied. This order implemented DEP's recommendation of early November.

At the outset we note that we are satisfied that the factual underpinnings of Judge DeSimone's conclusions are well-supported by the testimony in the record and that his findings are consistent with the weight of the evidence. See R. 4:52-1 (c); Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 483-484 (1974); State v. Johnson, 42 N.J. 146, 161-162 (1964). We are required by our scope of review to accept his factual findings and the reasonable inferences he drew from them.

This is the way the matter developed. On October 11, 1984 defendant Kinsley

Landfill, Inc., a state-regulated (N.J.S.A. 48: 2-13) but privately-owned sanitary landfill in Gloucester County, notified its customers that it would reach the capacity permitted by its permit issued by the defendant, Department of Environmental Protection (DEP), and would close on October 28, 1984. On October 18, 1984 the plaintiff, Borough of Glassboro, filed a verified complaint in lieu of prerogative writ and an order to show cause naming as defendants the Gloucester County Board of Chosen Freeholders, the DEP and its Commissioner, Kinsley Landfill, Inc., the DEP and its Commissioner, Kinsley Landfill, Inc., the City of Philadelphia, and the County of Camden. Glassboro, which was a Kinsley customer, sought both to enjoin closure of the landfill and the use of the landfill for solid waste generated in

Philadelphia, Pennsylvania and Camden County, New Jersey. Thereafter numerous parties who were customers of Kinsley intervened, including private waste haulers which served public and private entities in both New Jersey and Pennsylvania.

Judge DeSimone heard testimony on October 23, 24, 25 and 26 and rendered a decision on October 26, 1984. He found that Kinsley was quickly approaching the end of its useful life. He concluded that imminent closure would cause irreparable harm to many local municipalities dependent upon it. He also found that continued use beyond current design capacity threatened injury to the citizens of Deptford Township where the landfill is located. He concluded that a single 16-foot vertical expansion could extend, as a temporary measure, the landfill's capacity consistent

with legitimate environmental concerns. This 16-foot vertical expansion would buy enough time to permit the three counties to establish new landfill sites and thus solve their impending crisis.

On the judge's order Kinsley prepared an engineering design for the vertical expansion and a plan for orderly closure which were approved by DEP in early November. In its report DEP stressed most urgently the need for Salem, Gloucester and Camden Counties to develop new landfills. DEP reported that with extraordinary effort this could be done by November 1985. DEP observed that Kinsley would be full within three and one-half months, or the end of February 1985, if the current rate of flow continued. The additional 16-foot lift could extend the life of the landfill for the one-year period needed to develop new

landfills in the tricounty area, but only if the solid-waste flow to Kinsley was substantially reduced. In order to reduce the flow, DEP proposed that use of the landfill be limited to Gloucester County municipalities and to municipalities within the contiguous two counties, Camden and Salem, both of which had executed inter-district waste flow agreements with Gloucester County.[2] Moreover, the DEP report noted that any communities using Kinsley must be ordered to maximize recycling efforts.

We agree with Judge DeSimone that this is the very type of situation which the

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[2] Two small townships in Gloucester County, Elk and East Greenwich still have capacity at their municipally-owned landfills which they must exhaust before they can resort to Kinsley.

Legislature foresaw, intended to address, hoped to avoid when it enacted the Solid Waste Management Act, N.J.S.A. 13:1E-1 et. seq., L. 1970, c. 39, effective May 6, 1970, and recognized when it noted that the collection of solid waste was "a matter of grave concern to all citizens." Id. at §2. As the record here amply shows, this "grave concern" noted in 1970 had ripened to a potentially imminent catastrophe in the tricounty area by November 1984. Action was necessary. The only available local landfill to the tricounty area was Kinsley which would "reach its design capacity in a matter of days" from the conclusion of the hearing on October 26, that is between November 10 and 14, if nothing was done. The so-called "ten-year plan" originally conceived to permit Kinsley to operate routinely until 1988, when resource reco-

very technology became available had collapsed because of increased flow, much of it from outside of New Jersey.

The general background concerning the solid waste problem in this State over the past 15 years was outlined by Justice Handler in his decision and order denying appellant's application for a stay in this case. 98 N.J. 186. He said

> The Order that is the subject of these applications must be examined in the light of the critical Statewide concerns relating to solid waste disposal, noted as early as 1974 by this Court in Southern Ocean Landfill v. Mayor of Ocean Tp., 64 N.J. 190, 193, and again, eight years later, in A.A. Mastrangelo, Inc.v. Environmental Protection Dept., 90 N.J. 666 (1982). In particular, the order must be viewed within the framework of N.J.S.A. 13:1E-1 to 38, the Solid Waste Management Act. This Act was passed by the Legislature in recognition of the fact that the management of solid waste disposal in New Jersey had consisted largely of haphazard, random, uncoordinated activities undertaken with little, if any, regard for regional planning and coordination.

N.J.S.A. 13: 1E-2a. In order to protect the public health, safety, and welfare, the Act establishes the policy of New Jersey to provide a coordinated approach to solid waste disposal by establishing 22 solid waste management districts (consisting of 21 counties and the Hackensack Meadowlands district), each of which is charged with the responsibility of developing and implementing comprehensive solid waste management plans that meet solid waste disposal needs. N.J.S.A. 13:1E-2b(2). [Id. at 191-192].

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The Solid Waste Management Act contemplates that when solid waste is transported into a solid waste management district it must be pursuant to an interdistrict agreement. N.J.S.A. 13:1E-21b(3). According to the Department, a district cannot effectively plan for the solid waste disposal facilities that are needed to meet waste disposal needs unless it knows how much waste will be entering the district from various sources. While an out-of-state waste generator cannot be compelled to enter into such an agreement, it is entirely reasonable to authorize such generators to enter into appropriate contractual arrangements that will serve to further comprehensive planning and regulation. [Id. at 192-193].

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> Congress itself has recognized the need for the development of comprehensive state plans for solid waste disposal and implicitly this requires the planned management of waste flow. See, Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§6901-6987. Congress has there expressed a strong policy preference for resource recovery. See 42 U.S.C.A. §6941. Resource recovery cannot be accomplished if waste streams are not directed. See Central Iowa Refuse Systems, Inc. v. Des Moines Metro. Solid Waste, 715 F. 2d 419 (8th Cir. 1983) (restraint on waste flows essential to development of comprehensive waste flow plan). The court order here recognizes local responsibilities in this area, responsibilities that clearly require integrated planning. See A.A. Mastrangelo, Inc. v. Environmental Protection Dept., 90 No. J. 666(1982) (two state agencies have concurrent responsibilities to direct the interdistrict flow of waste); In re Application of Combustion Equipment Associates, 169 N.J. Super. 305 (App. Div. 1979).
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> [Id. at 194].

See also Maltz, "How Much Regulation is Too Much - An Examination of Commerce Clause

Jurisprudence, " 50 Geo Wash. L. Rev. 47, 72-74 (1981); Note, "Garbage, The Police Power, and the Commerce Clause; City of Philadelphia v. New Jersey," 8 Cap. U. L. Rev. 613 (1979); Note, "The Commerce Clause and Interstate Waste Disposal; New Jersey's Option After the Philadelphia Decision," 11 Rut. Cam. 31 (1979).

We are convinced that Judge DeSimone's order of November 13 withstands federal constitutional scrutiny for several reasons. We think that this situation has passed beyond the dimension of the every-day, business-as-usual commerce between the several states envisioned by Philadelphia v. New Jersey, 437 U.S. 624 (1978)(New Jersey statute barring all out-of-state waste held unconstitutional). The judge here was confronted with an imminent public health and welfare crisis, probably more

compelling and dangerous than the local burdens on commerce historically tolerated, as shown by the "quarantine" cases. See Asbell v. Kansas, 209 U.S. 251 (1908); Reid v. Colorado, 187 U.S. 137 (1902); Baldwin v. G.A.F. Sellig, Inc., 294 U.S. 511, 525 (1934); Bowman v. Chicago & Northwestern R. Co., 125 U.S. 466, 491 (1888). The judge here was not concerned with "the clamors of an impatient avidity for immediate and immoderate gain" against which James Madison as Publius inveighed in 1788. The Federalist No. 42. He was concerned with imminent considerations of public health and safety in the tricounty area of about 700,000, not with economic protection of local industry.

Coincidentally, we find it interesting that the "tipping fee" at Kinsley has more than tripled since the entry of Judge DeSimone's

order in November 1984. On January 7, 1985, the Board of Public Utility increased the tariff from $2.85 to $10 per-cubic-yard in order to accomodate the long-range costs of an environmentally sound closure. N.J. Evid. R. 9(2)(a). These closure costs, $7.47 per cubic yard, which ideally should have been accumulated throughout the life of the landfill through charges on both local and interstate users, must now be paid by local users. N.J.S.A. 13:1E-100, -116.

Philadelphia and other Pennsylvania communities had generated about 60% of the trash-flow to Kinsley. But only about 50% of all of Philadelphia's solid waste was sent to Kinsley. The City of Philadelphia has had no landfill within its borders since 1978. The record clearly shows that Philadelphia had the equipment and logisti-

cal capacity to route its solid waste elsewhere than Kinsley but that the 59 much smaller governmental entities in the New Jersey tricounty area had no feasible alternative to Kinsley because they lacked equipment and other resources to meet the imminent sanitary threat. The record demonstrates that the economic impact of the emergency order issued by Judge DeSimone was only modestly adverse to Philadelphia's Streets' Department budgeted item for this service, about 5% increase which would decrease to 2% after the first year. (Four million of a $91 million annual Streets' Department budget for the first year). Philadelphia's population is about 1.7 million. The economic effect on the 59 local municipalities dependent on Kinsley would have been enormous, assuming indeed there was any possible alternative

to the order. Glassboro's budget for solid waste disposal could escalate from $100,000 to $1,000,000 per year for a town of 14,500. Some towns, such as Clayton, Elmer and Woodstown had no alternative to their present private-hauler service if Kinsley were closed without access to an alternate local source. The private haulers would simply close down. There was credible evidence before the judge that Camden County's cost could rise from $3 million annually to greater than $12 million annually. Camden County has a population of about 500,000. We conclude that Judge DeSimone, in reality, had no choice in the matter but to act as he did to insure public safety. If our conclusion is soundly based, the constitutional arguments raised by appellants fail of necessity.

This temporary remedy, designed to prevent irreparable harm in the form of a

public-health crisis, derived from a proper balance of the equities whether conceived as the relative degree of hardship facing the local municipalities if no action were taken or the relative ability of waste generators outside of the tricounty area to cope with the judicial remedy imposed. See Crowe v. DeGioia, 90 N.J. 126, 134 (1982). This judicial order was not the blanket state-wide legislation precluding access for all time to New Jersey's solid-waste disposal sites to outsiders which was found constitutionally repugnant in Philadelphia v. New Jersey, supra. This was a carefully-crafted judicial order, balanced and molded to address only the evil of the day; not to throttle to perpetuity by economic discrimination any particular kind of commerce within or between the states.

We hold that the lost access by Philadelphia and others to the Kinsley site

for one year was not a "clearly excessive" concern for local interests in comparison to the "substantial state interest ... in easing solid waste disposal problems." Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 473 (1981). Even in Philadelphia v. New Jersey, 437 U.S. at 624, urged on us as controlling authority by Philadelphia, the Supreme Court observed its understanding "that incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people." Moreover, but for the judge's order crafted to confront this health emergency, Kinsley would now be closed, because it would have reached its design limits; Philadelphia would have no access, nor would anyone else. We would have left only a public-health crisis in New Jersey. We do not think that the Constitution compels such fatalism.

While recently addressing interstate control of ground water, the United States Supreme Court clearly acknowledged its "reluctan[ce] to condemn as unreasonable measures taken by a State to conserve and preserve for its own citizens this vital resource in times of severe shortage." Sporhouse [sic] v. Nebraska ex rel. Douglas, 458 U.S. 941, 956 (1982). The Court also said: "A State's power to regulate the use of water in times and places of shortage for the purpose of protecting the health of its citizens - and not simply the health of its economy - is at the core of the police power. For Commerce Clause purposes, we have long recognized a difference between economic protectionism on the one hand, and health and safety regulation on the other." Ibid. In Sporhouse [sic] Justice Stevens, speaking for the

Court, was not persuaded that Nebraska's restrictive statute was "narrowly tailored to serve" a legitimate local purpose. Id. at 958. Here the record abundantly shows that Judge DeSimone's order indeed was "narrowly tailored" in duration, location and neutrality of preclusion, as the Constitution compels, to meet the emergency needs of our citizens until new waste disposal sites could be established. See also Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); Tribe, American Constitutional Law, §6-6 at 329-330 (1978). Judge DeSimone, by approving the new 16-foot vertical lift, ordered Kinsley to accept new waste beyond the previously-determined environmentally-sound and lawful disposal capacity of the landfill but only to assure local health concerns, not to enhance provincal [sic] economic interests.

As noted, a key element of this State's planning process is the requirement of interdistrict agreements to govern the flow of solid waste. N.J.S.A. 13:1E-21b(3). This enables the county to know where the waste will be coming from and in what quantity. The judge found that Philadelphia, contending until almost the end for an absolute right of access to Kinsley free from any environmental planning responsibility, never entered into any interdistrict agreement or other contract with Gloucester County. Camden and Gloucester County both entered into these agreements. He specifically found that Gloucester County officials negotiated in good faith in an attempt to obtain a waste-flow agreement or contract. Philadelphia refused to reduce its flow voluntarily to 1981 levels and adopt verifiable recycling

efforts until quite late in this scenario.[3] Indeed, the judge found that Philadelphia's flow "continued to escalate at an alarming rate unlike those [New Jersey] districts subject to interdistrict agreements." He also found the burden on interstate commerce presented by a waste-flow agreement or contract requirement to be minimal "in light of the same burden being placed on in-state districts." We recently made these observations in City of Elizabeth v. DEP, - N.J. Super. ___, ___ (App. Div. 1984) (slip opinion December 21, 1984 at p.11),

> Appellant Ocean County Landfill contends, additionally, that to the extent the regulation limits it to receiving waste generated from within Ocean County, it excludes waste from out-of-state in violation of the Commerce

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[3] In Philadelphia v. New Jersey, 437 U.S. at 626, Justice Stewart said that New Jersey may protect its environment "by slowing the flow of all waste into the State's remaining landfills."

Clause of the Federal Constitution. See City of Philadelphia v. State of New Jersey. 437 U.S.I. 617 (178). The point missed by this argument, however, is that the regulation does not preclude the importation of waste into New Jersey. It merely designates the disposal sites available to specific solid waste generating districts. The regulation was not adopted in furtherance of "protectionist" policies and it does address a matter of legitimate local concern, that is, avoiding the excessive concentration of solid waste in areas with inadequate disposal capacities.

In any event, our decision does not turn on the presence or absence of a waste-flow agreement or contract between Gloucester County and Philadelphia, but on the reality that a very finite resource can be used temporarily in a parochial way to avoid public peril, without offending the federal constitution.

The United States Supreme Court last term considered a claim that the Privileges

and Immunities Clause,[4] which has a common historical origin with the historical origin with the Commerce Clause[5], conferred the absolute right to employment on public works projects equally upon in-state and out-of-state residents, despite the claim of dire local employment conditions which the City of Camden sought to remedy by a 40% employment "set aside" for Camden residents. United Bldg. & Constr. Trades v. Mayor, 97 L.Ed. 2d 249 (1984). Writing for

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[4] U.S. Const. Art. IV, §2, c. 1.

[5] The Privileges and Immunities Clause and the Commerce Clause have a common origin in Art. IV §2 of the Articles of Confederation and share the common purpose of national unity. Note, "Solving New Jersey's Solid Waste Problem Constitutionally", 32 Rut.L. Rev.741, 749-750 n. 50 (1979); see Hicklin v. Orbeck, 437 U.S. 518, 531-532 (1978).

the Court, Justice Rehnquist concluded that the right to employment indeed was fundamental and protected by the Privileges and Immunities Clause. But the right was not absolute, overriding all legitimate local concerns. The City of Camden contended that its "set aside" ordinance was "necessary to counter-act grave economic and social ills," 79 L.Ed. 2d at 261, i.e., spiralling unemployment, a sharp decline in population, dramatic reduction in local businesses, eroded property values and a depleted tax base. Camden contended that the ordinance was "carefully tailored" to alleviate these evils. The Court remanded to permit Camden to create a record to prove its claims of "grave economic and social ills." If so justified, the "set aside" ordinance could survive constitutional attack notwithstanding its discri-

minatory employment feature in favor of local residents. Justice Rehnquist noted that the constitutional inquiry must be "conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures," 79 LEd. 2d at 261, citing Toomer v. Witsell, 334 U.S. 385 (1948). By analogy to the Camden case, we find no constitutional infirmity in the order before us for review because the local health and welfare emergency, perceived as a veritable "doomsday" and an "horrendous specter," as found by Judge DeSimone and as supported by the record, required some accomodation of local interests during the waning days of this landfill. Over the life of this landfill, since the 1950's , Philadelphia, and indeed all generators outside of the tri-

county area, had enjoyed unlimited access to Kinsley up until November 13, 1984. In that context, the judicial order bars users from outside the tricounty area for only about 3% of the temporal life of the landfill. And that one year or 3% is available only because of the emergency judicial order extending the original environmental life expectancy. We deem this minimal local burden imposed on interstate commerce for bona fide public safety, concerns a constitutionally acceptable imposition. As the cases state, at a certain point in matters involving public safety, Commerce Clause considerations must yield to the police power. Where that point lies on any given scale of values calls for delicate judgment and due consideration for the sancity of our Union and the federal system, as well as for local concerns. Our review

of this matter persuades us that Judge DeSimone's order has respected that delicate balance in this most difficult situation. A bright constitutional line may certainly blur at points but where the burden is only temporary and adversely affects both New Jersey interests beyond the tricounty area and Pennsylvania interests, we cannot say his call was wrong.

We must stress that the order of Judge DeSimone in effect forecloses use of the landfill by both in-state and out-of-state users beyond the tricounty area. The order does not bar Philadelphia's trash simply because of its Pennsylvania origin but because of its origin outside the emergently-affected tricounty, Southern New Jersey area. Waste originating from Atlantic City, Trenton, Newark or the State

of Delaware, or any other source outside of the tricounty area was banned.[6]

In conclusion, we observe that the private haulers serving Pennsylvania and other excluded sources of waste who intervened on this appeal and who presented their constitutional arguments and overall objections to Judge DeSimone's preclusive order have been accorded due process. We conclude that their counsels' full participation on this appeal satisfies any due process concerns which might be raised on the grounds

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[6] Other New Jersey sources than Camden, Salem and Gloucester Counties accounted for 6.1% of waste dumped at Kinsley. The record shows that there was New Jersey waste originating from 13 counties outside the tricounty area coming to Kinsley. This waste is now barred as a result of the neutral prohibition contained in the court's exclusionary order directed to all nonsignatories of interdistrict agreements.

that they may not have participated fully in the Law Division. We conclude that for all purposes relevant to the issues raised on this appeal, all private haulers serving customers beyond the tricounty area have interests with Philadelphia. The dispositive issue here turns on the source of waste coming from outside the tricounty area and the emergent character of the situation in that region confronting the judge. The particular identity of any private or public hauler or its waste sources outside of the tricounty area is irrelevant to our disposition. We are basically concerned with the flow of waste into Kinsley, not any particular point of origin.

Affirmed.

SUPERIOR COURT OF NEW JERSEY
GLOUCESTER COUNTY - LAW DIVISION
DOCKET NO. L-070476-84 PW

BOROUGH OF GLASSBORO, a municipal corporation of the State of New Jersey, et als,	
Plaintiffs,	STENOGRAPHIC TRANSCRIPT
vs.	of Decision
GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, KINSLEY LANDFILL, INC., THE CITY OF PHILADELPHIA and THE COUNTY OF CAMDEN,	
Defendants.	

PLACE: Gloucester County Courthouse
Woodbury, New Jersey

DATE: November 13, 1984

B E F O R E:

HONORABLE SAMUEL G. DeSIMONE, AJSC

DOROTHY C. BOSS, CSR
Courthouse
Woodbury, New Jersey

THE COURT: Ladies and gentlemen, this is a the decision today in the Kinsley Landfill matter. Let the record reflect in regard to this matter, that again this morning I have heard excellent arguments of counsel in regard to the very complex issues, which this court must decide today. In addition thereto, over the weekend, I had an opportunity to review the reports that were submitted. I also had the opportunity to review the pleadings and this court's decision of October the 26, which again was reviewed by this court this morning after hearing arguments by counsel in regard to these issues.

Ladies and gentlemen, the doomsday of trash disposal is still upon us. This court again, and I emphasize, must intervene to protect the citizens of Deptford; the citizens of Gloucester County; and in effect,

all citizens of the State of New Jersey. This is an awesome decision that's been thrust upon this court to make -- so many legal complications and so many legal principles, so many factual situations, all awesome in regard to what I have to do today.

I stated before and I will state again, the court necessarily did not want to be in this position. It is not for the court to legislate; the court's purpose is to adjudicate. However, someone must fill this vacuum; someone must solve this dilemma. It has been thrust upon this court and this court aims to do it.

One of counsel likened the situation today to a baseball contest. Ladies and gentlemen, it is football season. The way I feel today if I could amplify a little, I am on the one-yard line with my goal behind

me; it's fourth down and I can't punt and I don't intend to. I intend to present to you and to the citizens of New Jersey and all people who are involved in this situation today a game plan, which I think is equitable, just, moral and equitable in regard to the solution that I propose.

This matter, ladies and gentlemen, is the Borough of Glassboro, et als vs. the Gloucester County Board of Chosen Freeholders, et als; and this action was brought on by way of an order to show cause respecting certain temporary restraints on an action in lieu of prerogative writ. The case was brought on for preliminary hearing as to the issuance of temporary restraints. And on October 26, after several days of testimony by witnesses for the various parties, this court issued a temporary restraining order against the defendant

Freeholders of Gloucester County, the New Jersey Department of Environmental Protection and its Commissioner and the Kinsley Landfill, restraining the parties from taking any action which would close the Kinsley Landfill. Furthermore, the court ordered the aforementioned defendants to provide the court with a modification to the Gloucester County Solid Waste Management Plan; a timetable for the order of the closure of Kinsley and an engineering report of a temporary vertical expansion for the landfill. I am pleased, and as I stated earlier in my opinion, and I will reemphasize for the record now, that all parties have complied with this order. The parties supplied the court with the documents and reports on November the 9 thereby affording me the opportunity of examining and reviewing same. Now ladies

and gentlemen, having had this opportunity, I am prepared to issue a ruling as to the future of this action. I am also prepared to render a decision, which I had previously reserved as to the temporary restraints requested against the City of Philadelphia.

On November the 5th, 1984, the Division of Waste Management received the proposed engineering design of a one lift expansion to the Kinsley Landfill. The report of the DEP or Department of Environmental Protection at its timetable for orderly closure states, that the lift on a whole is acceptable subject to the resolution of certain deficiencies. This lift will extend the life of the landfill for a period of approximately three and a half months at the present disposal rate. If the City of Philadelphia waste is not

accepted by the landfill, the extended period, that is, life expectancy, would be approximately one year.

The timetable for the orderly closure of Kinsley has incorporated this lift. The court is, therefore, satisfied that this lift is a reasonably, safe, temporary solution to this emergent situation. However, since the Division of Waste Management has noted certain deficiencies in its report, this court will retain jurisdiction as to insure the quick resolution of the same. Thus, accordingly, to the timetable submitted, the following shall take place and this court will amplify this order in detail following the five points that I mentioned:

1. The counties of Camden, Gloucester and Salem shall proceed immediately with implementation of one or more landfills

within their borders, with such landfills to become operational within 12 months in accordance with Exhibits B and C attached hereto and an order of this court. Let the record again state that this court personally rendered a decision in the matter of Alloway Township vs. Salem County Freeholders in the latter part of this summer in a multi-page written opinion concering the siting of Salem.

2. Within two weeks Kinsley Landfill shall cease accepting all solid waste generated within the City of Philadelphia and other Pennsylvaia communities and other out-of-district solid waste not subject to inter-district agreements.

3. Within two weeks all municipalities using Kinsley Landfill and all municipalities of Gloucester, Camden, and Salem Counties, shall maximize their recycling

efforts including curb side pickup, mandatory ordinances, stepped up public awareness compaigns and increased enforcement efforts; and shall report to this court and to the DEP on the same.

4. Other wastes presently disposed of at the Kinsley Landfill will be disposed of at the vertical expansion, no virgin ground, vertical expansion to the Kinsley Landfill until it reaches capacity, at which time said wastes are redirected to the new landfills to be implemented in the counties of Camden, Gloucester and Salem.

Lastly, five, disposal of sewage sludge at Kinsley Landfill shall cease on March 15, 1985.

The timetable is based, ladies and gentlemen, upon certain conclusions reached by the Department of Environmental Protection in its report to the court.

One, that at present there are, in fact, no alternative sites in the State of New Jersey to which it would be feasible to redirect the waste flows presently disposed of at Kinsley.

Two, based upon the first conclusion, immediate siting of new landfills is of utmost necessity.

Three, due to this situation, the redirection of Philadelphia waste was not possible.

Four, waste flow reduction is necessary in order to maximize the expanded life of Kinsley, which can be accomplished in part by recycling the plans implemented by each municipality using Kinsley.

Five, with respect to sewage sludge, such sludge by virtue of statutory and regulations already required to cease landfill disposal by March 15, 1985.

The court wants to be clear in my decision so that everyone will understand that this court adopts the one-year plan of DEP for siting and implementation. I do so for the orderly closure of Kinsley and I do so to solve this immediate dilemma, which is upon us today.

The DEP plan does insure the orderly closure of Kinsley and has attached to its report proposed administrative consent orders, which expedite the statutory process for the siting and implementation of landfills for Gloucester, Salem and Camden Counties. An intrical [sic] part of this plan is that the extended life period of Kinsley last for a period of approximately one year; thus, requiring this court to enjoin the disposal of waste by the City of Philadelphia at the Kinsley Landfill.

The plaintiffs in this action also seek

temporary injunctions restraining disposal by the City at Kinsley and restraining disposal by Camden County until those districts enter into reasonable inter-district waste flow agreements with Gloucester County in accordance with the goals, purposes and parameters of the Gloucester County Solid Waste Management Plan. This court notes that such an inter-district agreement was negotiated with Camden County signed by representatives of Gloucester County and thereafter during the course of preliminary hearings on this matter signed by the representatives of Camden County. The brief for the plaintiff, Borough of Glassboro stress that such agreements are intrical [sic.] to the solid waste, management of a coordinated statewide system as provided by New Jersey Statutes Annotated 13:1E and other portions

of that statutory authority. According to P-2 in evidence, page six, the DEP has required such agreements with the County of Camden and the City of Philadelphia since 1980 as a condition to the continued use of the Kinsley Landfill. These deficiencies of the Gloucester County Plan have been noted by the Department of Environmental Protection and its Commissioner several times over the course of four years.

Plaintiff argues that the required waste flow agreements apply even-handedly to in-state districts utilizing landfill sites in New Jersey as well as out-of-state districts utilizing the same.

Therefore, such requirements do not fall within the proscription enunciated in the case of City of Philadelphia vs. New Jersey, 437 United States Reports, 617, [sic] a 1978 U.S. Supreme Court case. In

that case the United States Supreme Court declared a New Jersey Statute, which banned most of out-of-state waste as violation of commerce clause of U.S. Constitution, United States Constitution. Accordingly, to Justice Stewart, writing the opinion for the majority and the opinions of the court through the years have reflected an alertness to the evils of economic isolation and protectionism, while at the same time recognizing that incidental burdens on interstate commerce may be unavoidable when a state legislates to safeguard the health and safety of its people. And this was found at page 623 of that opinion.

The opinion construed in its analysis to distinquish the test to be applied when a statutory authority was discriminatory on its face and the test applicable when a statutory authority regulates even-handedly

to effectuate a legitimate public interest imposing an incidental burden on interstate commerce. The latter test is, and I quote, "The statute will be upheld unless the burden imposed on such commerce is clearly excessive in relationship to the punitive [sic.] local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." This was found at page 624 and I will note, that the court in the City of Philadelphia case, that is, the United States Supreme Court did cite Pike vs. Bruce Church, Incorporated, 397 United States Reports, 137.

Ladies and gentlemen, in the case at bar, the requirement of inter-district

waste flow agreements to insure the integrity of the county or district plan as part of a coordinated statewide management of waste facilities was a requirement imposed on in-state districts as well as out-of-state districts. The burden on interstate commerce was minimal in light of the same burden being placed on in-state districts. Counsel for the City vigorously maintains first, that such regulation requiring inter-district agreements and the City's failure to enter into one is of new [sic.] legal consequence due to the fact that nowhere is it stated that non-compliance with such regulations will result in a ban of that party's waste disposal. Secondly, counsel again vigorously argues that even if the agreements are required and are of some legal consequence, the City of Philadelphia

attempted to negotiate such an agreement in good faith; that the demand of the Gloucester County Freeholders during negotiations were unreasonable and in violation of the commerce clause. Yet, ladies and gentlemen, in C-5 admitted into evidence in these hearings at the preliminary hearing, which is a copy of correspondence between the parties it is stated unequivocally by a representative of the City in regards to that negotiation, "Gloucester County is being very cooperative." Since the court is of the opinion to back the Department of Environmental Protection and in its request for a closure of the Kinsley Landfill to support or even order the City to negotiate an inter-district waste flow agreements at this time would be to require a futal [sic.] act.

This court, ladies and gentlemen,

however cannot permit the unrestrained disposal of waste by this party, that is, Philadelphia under the present circumstances as were noted in the court's opinion of October 26. The court has heard testimony that the disposal of waste by the City of Philadelphia has continued to escalate at an alarming rate. Unlike those districts subject to inter-district agreements, by virtue of the testimony given before this court, I do not find the existence of bad faith on the pa[illegible] of the Gloucester County Board of Freeholders. Furthermore, in addition thereto, this court is balancing the equities involved, which I have done throughout this very complex litigation, in giving due consideration to the parties and the effect of an imminent closure of Kinsley, notes that the City of Philadelphia is the only party in this action which by

way of testimony of a Mr. Michaels, who, I believe, was the Streets Commissioner of Philadelphia and who I found to be a most credible gentlemen, but the Commissioner of Streets and Roads had informed this court from this very stand on October 26 that it can accommodate an imminent closure at Kinsley. It is for these reasons that I order the City of Philadelphia to stop the disposal of its waste at the Kinsley Landfill. I do so in accordance with the recommendation of the Department of Environmental Protection, ten days from today. I calculate it to be November the 27, 1984 at 4:00 p.m. Thus, the court adopts the DEP Plan in its entirety.

Ladies and gentlemen, a few weeks ago on October the 26, I alluded to this problem as a ship on alien seas, which was pilotless. The DEP has stepped into that

pilot's cabin and has given this court a plan; a plan that excludes and gives us equity, morality and justice; a timetable for the closure of Kinsley and yet, in a situation wherein the citizens of New Jersey are protected.

The court recognizes that the Gloucester County Freeholders have authorized in their negotiations with a professional service contract with Speitel Associates. The scope of the services to include the siting and implementation of a disposal site. This is in compliance with the suggested DEP report, which was present to this court and all counsel. The court will retain jurisdiction over this procedure. I do so, so that everyone in this room and the record is clear, that this court feels jusitifed and feels that it is within the inherent jurisdiction of a court in New

Jersey with its inherent equitable powers to place a protective cloak around this entire situation to solve this dilemma, to avoid this doomsday that is upon us tomorrow. Someone had to fill the void. This court aims to do so in an effort to do what is right, moral and just and to do what's right for the health, welfare and citizens of the State of Jersey.

This protective cloak will expedite the resolution of any problems which may arise in connection with the siting of alternative landfills and implementation of the DEP for an orderly closure of Kinsley. Therefore, this court orders additionally, and I do so to carry out the philosophy as I have stated on the record, to carry out the very fine suggestion of the Department of Environmental Protection, that the Gloucester County Board of Freeholders of

Gloucester, Salem and Camden Counties report one week prior to January the 1st, 1985 on the status of sites for alternate landfills. Now the Salem matter is currently on appeal. However, I do desire a report from the attorneys for Salem in regard to the status of that particular litigation.

Plaintiff, that is, the plaintiff municipalities that are a part of these legal proceedings, and there are many and I am not going to enumerate them; however, I am going one step further because what we are doing here ladies and gentlemen requires a team effort and everyone must comply with the court's directiveness. We are all in it to avoid this doomsday. I am going to order, and I believe I have inherent authority to do so, I do so again for the health, welfare and morals and for the good

of the citizens of the State of New Jersey. I order all plaintiff municipalities and all Gloucester, Camden and Salem municipalities to implement recycling efforts as are outlined in the DEP report and to inform this court of the status of such efforts two weeks from today.

I order, and I will state it again and for the reasons that I have stated on this record, that the City of Philadelphia cease disposal of solid waste at Kinsley by November 27, 1984 at 4:00 p.m. In addition thereto, I have closely examined the engineering reports that were submitted in regard to the vertical uplift, and I want to record to be clear, this court is talking about vertical uplift, no new virgin ground at Kinsley, vertical uplift. I order Deptford Township to approve building permits for the vertical uplift

and I personally will retain jurisdiction over any problems in regard to the issuance of that building permit.

Again, ladies and gentlemen, I want this group and the attorneys to recognize what this court is doing. It is not my intention to step into this situation and for the court to mandate certain things. You have given me this problem and I aim to solve it. And the only way I can is to closely monitor the situation. And when I say the court puts a protective cloak over this situation, it is in an effort and in the spirit and not only to protect the citizens of this county and the State of New Jersey but in the spirit to solve this dilemma that is affecting all of us; not to be arbitrary and capricious and to impose the court's will upon this municipality but in the spirit to all of us, the citizens of

Deptford and citizens of Gloucester County and citizens of New Jersey to solve this unfortunate dilemma.

In fashioning the remedy, I have given great consideration to the concerns of the residents of Deptford Township and the problems of their environment. I heard and I stated on October 26 in this very courtroom, I heard the testimony of a housewife who testified right from this stand under oath of how her eyes watered; of the stench of trash being thrown from trucks or windblown. I am sensitive to the feelings of those good citizens of that township. I understand their plight. I have compassion for them. I alluded to that testimony. I thought of it in regard to this decision that I make today. I am not discounting by the decision that I a making. I told the same group, in the

United States, which makes us the greatest country in the world, we live by rule of law and reason and in that regard, an orderly closure must take place, not a haphazard closure, an orderly closure and that is the aim of this court by this particular decision. It is not my intention to ignore the good citizens of Deptford Township. I sympathize with their plight. What we are attempting to do is to come up with an overall plan that will protect not only the citizens of Deptford, not only the citizens of Gloucester County but also the citizens of the State of New Jersey.

Now in that regard ladies and gentlemen, because of the total emergent nature of this particular matter that's before me and all of the things that I have ordered, I am going to relax the court rule and on these injunctive orders and orders that I

have made today, because of the necessity of acting fast and, ladies and gentlemen, you are aware that this court has handled this matter on an emergent basis, clearing my calender in order to do so and give this case top priority. I again will relax the rules and allow instead of a two-day notice, you can come back in on one-day notice, that is, 24 hours you can come back before this court for relief or modification.

In addition thereto, ladies and gentlemen, again I thank you for your courtesies, your excellent arguments, which were presented. Again I want to state for the record and for all participants in this proceeding that this court has attempted to employ every equitable situation of my experience in trying to solve this very difficult problem. I have balanced the equities. I have not treated this case

lightly. I balanced the equities in that I visualize the horrendous spector of tomorrow trash piling up in the vicinity of this courthouse. I have considered skyrocketing municipal costs, which, of course, goes -- and I have said this many times and I will say it again, because we are talking frankly today, because this is a problem that affects all of us. The poor taxpayer, he takes it on the chin when he gets the tax bill, skyrocketing municipal costs in placing this trash elsewhere. I've considered the poor citizens of Deptford Township, who have lived with this ordeal as the testimony and the record reveals to this court. And lastly -- before that, I've considered Philadelphia's plight and have not treated that lightly. But I felt for the reasons that I stated that I must do what I had to do today in

regard to this horrendous problem. And lastly, I've considered the vast specter, the vast plan of trash disposal not only in Gloucester County. I've considered my decision on how it affects Salem County, Camden County, all the municipalities and most important all of the citizens of the State of New Jersey. I have, in effect, issued these orders bearing in mind the balancing of these equities and I find and determine for the reasons that I have given on the record today that the orderly closure of Kinsley can be best accomplished as I have outlined it and as has been recommended by the DEP, that all the citizens of the State of New Jersey, Gloucester, Camden and Salem County and, of course, Deptford Township will benefit by this decision and I have employed what I feel are equitable and just principles in an effort to avoid

doomsday trash disposal, which is upon us today. For all of the reasons that I have stated in this opinion, I am going to issue the orders that I have issued today. Mr. Lisa, I am going to ask you to present an order to the court as to form only with consent of all counsel or under the five-day rule or in the event that you desire to formulate an order today with all counsel here, please feel free to do so. I will be in my other courtroom starting another trial in the matter of Department of Transportation, State of New Jersey vs. Jarco. You could find me up there.

Ladies and gentlemen, thank you for your courtesies. This hearing is ended for today.

MR. KUDATSKY: Will the court entertain an application for a stay pending appeal at this time, because I am prepared to present witnesses --

THE COURT: Just one moment, folks. I have an important application here, one moment please. Just be a little quiet. You can either stay or if you want to leave, go ahead and leave. I have got to hear what counsel has to say. Everyone sit down if your are going to stay.

Mr. Kudatsky, go ahead.

MR. KUDATSKY: Your Honor, on behalf of the City of Philadelphia, I will represent we will be immediately filing a motion for leave to appeal from Your Honor's ruling of today and I, therefore, must, under the rules, request from the trial court a stay of your ruling pending appeal. I am prepared to present witnesses right now as to the impossibility of the City of Philadelphia complying with a shutdown or, I am sorry, a bar date of November 27, 1984. I would also request that the court,

whether at this moment or as immediately as possible, set this case down for a case management conference or at least expedited trial on the merits and also authorize me to engage an expedited discovery. As I understand Your Honor's ruling, it is a preliminary injunction pending final adjudication in this case, which will occur at some, as yet, unspecified time and I am, therefore, moving to have the trial on the merits be scheduled promptly with due regard to the court's emergent calendar as I know it is. But certainly on this stay application I'd like to proceed with that today.

THE COURT: Any arguments on the stay?

MR. LISA: Of course, I oppose the stay for two reasons. To grant the stay would totally vitiate the order for which the stay is requested and makes it meaningless.

Secondly, the effect of the ruling against the City of Philadelphia does not take effect by the court's order to for two weeks, which gives them plenty of time to address this to the Appellate Division.

THE COURT: Mr. Haley.

MR. HALEY: I would just second exactly what Mr. Lisa said.

MR. HASBROUCK: I would join in that.

THE COURT: Ladies and gentlemen again, what Mr. Kudatsky has proposed to this court, that I stay my decision until he can seek appellate process, which certainly is his right. In that regard, that particular application, ladies and gentlemen, so you will understand, it is addressed to the sound discretion of the trial court. I being the trial court exercise my discretion. Mr. Kudatsky, I deny your motion for a stay. My order will go into effect

immediately. The reason I do so is as counsel has pointed out on the record. The injuntion does not take effect against the City of Philadelphia until November the 27, at 4:00 p.m. That is the cutoff date. In the meantime you, of course, have the right to seek Appellate Process. I exercise my discretion. Your application for a stay is denied by this court.

MR. KUDATSKY: Just so I understand, you are not reserving ruling on the stay until the 27. You are denying it?

THE COURT: I am denying it today. I want my order to go into effect for the reasons I stated on the record.

MR. KUDATSKY: I want to be sure so I can represent it to the Appellate Division.

THE COURT: I will say it again, it is denied. I have exercised my discretion, no stay from this court. You may seek it from the Appellate Division.

Now in regard to case management Mr. Kudatsky, as you realize this court wears two hats. I am also Assignment Judge for Gloucester, Cumberland and Salem Counties and also Civil Assignment Judge for all three of those counties. What I would suggest is that you send me a letter requesting case management with copies to all counsel and I will attempt to fit it in my very busy schedule.

MR. EPSTEIN: Am I to interpret from the order when reduced to writing and signed, it would contain a restraint against the County of Gloucester to restrain them from terminating our existing agreemnt?

THE COURT: Mr. Epstein, the court is adopting the DEP Plan, okay. That's all I will say in regard to that particular matter. If you have any problems on that,

you can come in on a one-day notice. I would suggest that you see counsel or Gloucester as well as Camden.

MR. EPSTEIN: Thank you.

THE COURT: Anything else?

Thanks a lot.

(Whereupon, the hearing was concluded.)

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SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY
DOCKET NO.
L-070476-84 PW

BOROUGH OF GLASSBORO,
a municipal corporation
of the State of New
Jersey

Plaintiff

v.

GLOUCESTER COUNTY BOARD
OF CHOSEN FREEHOLDERS,
et al

Defendant

CIVIL ACTION

ORDER FOR PRELIMINARY INJUNCTION

This matter having been opened to the Court by Joseph F. Lisa, Esq., attorney for Plaintiff Borough of Glassboro, and in the presence of counsel for the various parties to this case and this matter having been heard by the Honorable Samuel G. DeSimone on October 19, 23, 24, 25, 26 and November 13, 1984 and the Court having heard the testimony of the various witnesses, having

reviewed the various exhibits, affidavits and briefs submitted by counsel and having heard the arguments of counsel, and it appearing to the Court that there is an immediate threat of irreparable injury if the temporary restraints entered by this Court on October 26, 1984 are not converted into a preliminary injunction with the modifications herein set forth, and for the reasons set forth by the Court in its oral Opinion on November 13, 1984, and for good cause shown;

It is on the 13th day of November, 1984 ORDERED

1) that defendants are restrained from taking any action which would prevent the continued uninterrupted use of Kinsley Landfill in accordance with the terms of this order.

2) The Counties of Camden, Gloucester and Salem shall proceed immediately with

implementation of one or more landfills within their borders, with such landfills to become operational within 12 months of the date hereof in accordance with Exhibits B and C attached hereto with respect to Camden and Gloucester Counties, and with respect to Salem County, in accordance with a schedule to be filed with the Court.

3) Not later than November 27, 1984 at 4:00 P.M., Kinsley Landfill shall cease accepting all solid waste generated within the City of Philadelphia and other Pennsylvania communities, and shall cease accepting other out of district solid waste not subject to interdistrict agreements.

4) Not later than November 27, 1984, all municipalities within the borders of Camden, Gloucester and Salem using the Kinsley Landfill shall maximize their recycling efforts, including curbside

pickup, mandatory ordinances, stepped up public awareness campaigns, and increased enforcement efforts, and shall report to the Court and the DEP within such time.

5) Except as provided in paragraph number 3 above, all wastes presently disposed of at the Kinsley Landfill will be disposed of at the vertical expansion to the Kinsley Landfill until it reaches capacity, at which time said wastes are redirected to the new landfills to be implemented in the Counties of Camden, Gloucester and Salem.

6) Disposal of sewage sludge at Kinsley Landfill shall cease on March 15, 1985.

7) Kinsley landfill may implement a vertical expansion for one additional lift of compacted solid waste to be conducted in accordance with the engineering design sub-

mitted by Kinsley and in accordance with the report submitted to the Court by DEP.

8) The Counties of Salem, Gloucester and Camden shall report to the Court not later than December 24, 1984 on the status of site selection for county landfills.

9) The Township of Deptford shall issue the building permits necessary for the vertical expansion of Kinsley landfill.

10) Any provision of this Order may be modified or dissolved by application of any party on one-day notice to all other parties.

11) This Court retains jurisdiction.

12) The motion of the City of Philadelphia to stay this order pending appeal is denied.

/s/ Samuel G. De Simone
SAMUEL G. DE SIMONE, A.J.S.C.

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SUPERIOR COURT
OF NEW JERSEY
LAW DIVISION
GLOUCESTER
COUNTY

Plaintiff, BOROUGH OF GLASSBORO, a municipal corporation of the State of New Jersey,

Docket No. L-070476-84
PW

vs.

Defendants, GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, et als.

CIVIL ACTION

ORDER CLARIFYING
PRIOR ORDER DATED
NOVEMBER 13, 1984.

This matter having been brought before the Court by Thomas S. Higgins, Esquire, of the law firm of Higgins & Slachetka, PA, attorneys for The Camden County Municipal Utilities Authority, for an order modifying and clarifying a prior order entered by this Court on November 13, 1984 in the above-captioned case;

And notice of said case having been communicated telephonically upon the parties and in the manner set forth in the Affidavit of Service herein;

And the Court having considered the affidavit of Richard K. Perna, P.E. dated November 28, 1984;

And the Court further having considered all of the pleadings and testimony in the above-captioned case;

And the Court having reviewed its prior order of November 13, 1984;

And the Court being satisfied that good cause has been shown to modify and clarify said order;

IT IS THEREUPON this 29th day of November, 1984, ordered that the prior order of this Court dated November 13, 1984 is clarified to permit the Camden County Municipal Utilities Authority Rockaway

Valley Regional S.A., Borough of Collingswood, Clementon S.A. Straford S.A. to continue to deposit sewage sludge and grit removed from its wastewater treatment facilities at Kinsley Landfill effective immediately and until further order of this Court. All other provisions of the order of November 13, 1984, except as modified by the Superior Court of New Jersey, Appellate Division, or the Supreme Court of the State of New Jersey, or this Court are continued.

/s/ Samuel G. De Simone
SAMUEL G. DE SIMONE, A.J.S.C.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY
DOCKET NO.
L-070476-84 PW

BOROUGH OF GLASSBORO,
a municipal corporation
of the State of New
Jersey

CIVIL ACTION

Plaintiff

TEMPORARY
RETRAINING [SIC] ORDER

v.

GLOUCESTER COUNTY BOARD
OF CHOSEN FREEHOLDERS,
et al

This matter having been opened to the Court by Joseph F. Lisa, Esq., attorney for Plaintiff Borough of Glassboro, and in the presence of counsel for the various parties to this cause as indicated on the list and annexed hereto, and this matter having been heard by the Honorable Samuel G. Desimone on October 19, 23, 24, 25, 26, 1984 and the Court having heard the testimony of the various witnesses, having reviewed the

various exhibits, affidavits and briefs submitted by counsel and having heard the arguments of counsel, and it appearing to the Court that there is an immediate threat of irreparable injury if the temporary restraints are not granted, and for the reasons set forth by the Court in its oral Opinion on October 26, 1984, and for good cause shown;

It is on this 26th day of October, 1984, ORDERED that defendants are restrained from taking any action which would prevent the continued uninterrupted use of Kinsley Landfill until and including November 13, 1984;

And it is further ORDERED that not later than November 9, 1984, the County of Gloucester shall formulate a reasonable alternate site for solid waste disposal and to modify its Solid Waste Management Plan

accordingly, and take all steps necessary to effectuate same, and shall submit a written report to the Court by 4:00 P.M. on November 9, 1984;

And it is further ORDERED that not later than November 9, 1984, the DEP shall submit a timetable for the orderly closure of the Kinsley Landfill and take steps to redirect waste flow in an orderly fashion and submit a report to the court by 4:00 P.M. on November 9, 1984;

And it is further ORDERED that not later than November 5, 1984, Defendant Kinsley Landfill, Inc. shall submit to Walter Burshtin of the DEP and to the Court, a complete engineering design for the vertical expansion of the Kinsley Landfill for one additional lift of compacted solid waste;

And it is further ORDERED that not later than November 9, 1984, the DEP shall

review the Engineering design and submit a written report to the Court by 4:00 P.M. on that date;

And it is further ORDERED that all reports and submissions required by this Order shall be made available to all counsel on November 9, 1984 by 4:00 P.M. at the Gloucester County Court House;

And it is further ORDERED that the Court shall reserve decision on the application for restraints against the County of Camden and the City of Philadelphia;

And it is further ORDERED that all counsel shall appear before the Court on November 13, 1984 at 9:00 A.M. for argument regarding the continuation, dissolution or modification of this ORDER and the restraints contained therein;

And it is further ORDERED that any provision of this Order may be modified or

dissolved by application of any party on one-day notice to all other parties.

/s/ Samuel G. De Simone
SAMUEL G. DE SIMONE, A.J.S.C.

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ATTORNEY FOR Plaintiff

BOROUGH OF GLASSBORO, A Municipal Corporation of the State of New Jersey,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY DOCKET NO.
Plaintiff,		
-vs-	:	Civil Action
GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, KINSLEY LANDFILL, INC., THE CITY OF PHILADELPHIA and THE COUNTY OF CAMDEN,	:	VERIFIED COMPLAINT IN LIEU OF PREROGATIVE WRIT
Defendants.		

The Borough of Glassboro, A Municipal Corporation of the State of New Jersey with principal offices located at Main and High Streets, in the Borough of Glassboro, County of Gloucester and State of New Jersey by way of Complaint says:

FIRST COUNT

1. The Gloucester County Board of Chosen Freeholders (hereinafter referred to

as "County") has adopted a solid waste mangement plan, which has been most recently updated as of February 9, 1983.

2. Pursuant to the authority contained in the Solid Waste Management Act, defendants, Robert E. Hughey, Commissioner of the New Jersey Department of Environmental Protection and the New Jersey Department of Environmental Protection (hereinafter jointly referred to as "DEP") by certification dated July 28, 1983, did approve the said County Solid Waste Management plan, subject to certain modifications and noting various significant deficiencies in said plan.

3. Defendant, Kinsley Landfill, Inc. (hereinafter referred to as "Kinsley") maintains and operates a solid waste disposal facility in the Township of Deptford, Gloucester County, New Jersey. Said faci-

lity has been in continuous operation since in or about 1958. Pursuant to the current Gloucester County Solid Waste Management Plan, as updated by the County and approved by the DEP, all solid waste generated in the Borough of Glassboro must be disposed of at Kinsley.

4. The current update of said Gloucester County Solid Waste Management Plan provides, inter alia, that Kinsley shall remain open until 1988.

5. A key element of said Gloucester County Solid Waste Management Plan provides that the County will proceed with the implementation of a County resource recovery facility to be on line by 1987, prior to the closing of Kinsley in 1988. Said resource recovery facility would then be available to the Borough for disposal of its solid waste, prior to the closing of

Kinsley, and therefore without interruption of an available site for such disposal.

6. Based upon information and belief, the portion of the Kinsley facility which is presently in operation pursuant to approval granted by the DEP is about to reach its permitted capacity, which may result in the closure of said facility in the immediate future, if expansion to other adjoining lands of Kinsley is not approved for solid waste disposal purposes by the DEP.

7. Upon information and belief, Kinsley owns substantial adjoining lands, consisting of approximately 188 acres, which is suitable for additional solid waste disposal as a continuation of the existing operation and facility.

8. Pursuant to the provisions and procedures set forth in the Solid Waste

Management Act, Kinsley has made application to the County and the DEP for approval to utilize said additional tract of land for solid waste disposal purposes.

9. The County has deemed said application to be in violation of the existing approved Gloucester County Solid Waste Management Plan, thereby requiring an amendment to said Plan by the County.

10. Although the Gloucester County Solid Waste Management Plan purports to impose a condition upon the continued utilization of the Kinsley Landfill until 1988, at Chapter 4, Section B (c), that Kinsley must operate within its permitted design capacity with no expansion, said purported condition is void and unenforceable because:

(a) Within the context of the overall plan, and by reading of the overall

Plan document, the plain and unambiguous requirement that Kinsley remain open until 1988 is a material and essential ingredient of the Plan and was clearly intended as such in the formulation of the Plan; and

(b) In the certification of said plan by the DEP, the Commission concluded that, with Kinsley operational through 1986-1987, the County had identified sufficient capacity to meet the County's disposal requirements through that time, but that the Plan was deficient for failure to designate sufficient additional suitable sites to meet the mandatory ten year planning requirement under the Solid Waste Management Act.

11. Therefore, the Gloucester County Solid Waste Management Plan, as presently updated by the County and certified by the DEP, allows for and requires expansion of

the Kinsley facility, at least to the extent necessary to render said facility available for solid waste disposal by the Borough until 1988 or until such time as the County's resource recovery facility is operational.

12. The closure of the Kinsley Landfill in the immediate future will result in immediate and irreparable harm to the Borough and its residents.

13. The Solid Waste Management Act divests municipalities of control and jurisdiction over their solid waste disposal. Said Act charges the DEP and the County with the authority, jurisdiction, and responsibility of providing a comprehensive plan for disposal of solid waste, for a duration of at least ten years, for the uninterrupted disposal of solid waste. If Kinsley Landfill is permitted to close

without the substitution of a comprehensive ten year plan providing for a reasonable and viable alternative means of disposing of solid waste, without interruption, such responsibility will not have been fulfilled by the DEP and the County.

WHEREFORE, Plaintiff Borough of Glassboro demands judgment against the County, DEP, and Kinsley as follows:

(A) Determining and declaring that the Gloucester County Solid Waste Management Plan, as presently updated by the County and certified by the DEP, allows for and requires expansion of the Kinsley Landfill, at least to the extent necessary to render said facility available for solid waste disposal by the Borough until 1988 or until such time as the County's resource recovery facility is operational.

(B) Enjoining and restraining any action by said Defendants, the County, DEP

or Kinsley, which would close Kinsley Landfill to the Borough pending the final outcome of this action.

(C) Enjoining and restraining any action on behalf of said Defendants which would prohibit the disposal of solid waste generated in the Borough until 1988, or until such time as the County's resource recovery system is operational.

SECOND COUNT

1. Paragraphs 1 through 9, and 12 and 13, of the First Count are hereby repeated and realleged as if fully set forth herein.

2. If, in the alternative to the allegations set forth in Paragraphs 10 and 11 of the First Count, it is determined that the Gloucester County Solid Waste Management Plan, as updated and certified,

does not allow and require expansion of the Kinsley Landfill at least to the extent required to permit its continued operation until 1988 or until the County's resource recovery facility is operational, then said Plan is materially deficient pursuant to the applicable terms of the Solid Waste Management Act for the following reasons:

(a) Failure to provide for a ten year plan of uninterrupted capability for disposal of solid waste generated within the County;

(b) Failure to designate sufficient additional available suitable sites to provide for disposal of solid waste, if Kinsley is not allowed to remain open;

(c) Other miscellaneous violations.

3. If said plan is determined to be materially deficient and in contravention of the applicable provisions of the Solid Waste Management Act then it should be reformed to allow expansion of Kinsley Landfill, at least to the extent required to permit its continued operation until 1988, or until the County's resource recovery facility is operational, in order to achieve the intended purpose and policy of the Plan.

WHEREFORE, in the event that the relief demanded in the First Count is not granted, Plaintiff Borough of Glassboro demands judgment, in the alternative under this Count, against Defendants County, DEP and Kinsley, as follows:

(A) Reforming the Gloucester County Solid Waste Management Plan to allow expan-

sion of Kinsley Landfill, at least to the extent required to permit its continued operation until 1988, or until the County's resource recovery facility is on line.

(B) Enjoining and restraining any action by Defendants County, DEP or Kinsley which would prevent the continued, uninterrupted disposal of solid waste generated in the Borough at Kinsley Landfill, pending the final outcome of this action.

(C) Enjoining and restraining the continued uninterrupted disposal of solid waste generated in the Borough at Kinsley Landfill until 1988, or until the County's resource recovery facility is operational.

2. If, in the alternative to the allegations set forth in Paragraphs 10 and

11 of the First Count, it is determined that the Gloucester County Solid Waste Management Plan, as updated and certified, does not allow and require expansion of the Kinsley Landfill at least to the extent required to permit its continued operation until 1988 or until the County's resource recovery facility is operational, then said Plan is materially deficient pursuant to the applicable terms of the Solid Waste Management Act for the following reasons:

(a) Failure to provide for a ten year plan of uninterrupted capability for disposal of solid waste generated within the County;

(b) Failure to designate sufficient additional available suitable sites to provide for disposal of solid waste, if Kinsley is not allowed to remain open;

(c) Other miscellaneous violations.

3. If said plan is determined to be materially deficient and in contravention of the applicable provisions of the Solid Waste Management Act then it should be reformed to allow expansion of Kinsley Landfill, at least to the extent required to permit its continued operation until 1988, or until the County's resource recovery facility is operational, in order to achieve the intended purpose and policy of the Plan.

WHEREFORE, in the event that the relief demanded in the First Count is not granted, Plaintiff Borough of Glassboro demands judgment, in the alternative under this Count, against Defendants County, DEP and Kinsley, as follows:

(A) Reforming the Gloucester County Solid Waste Management Plan to allow expansion of Kinsley Landfill, at least to the

extent required to permit its continued operation until 1988, or until the County's resource recovery facility is on line.

(B) Enjoining and restraining any action by Defendants County, DEP or Kinsley which would prevent the continued, uninterrupted disposal of solid waste generated in the Borough at Kinsley Landfill, pending the final outcome of this action.

(C) Enjoining and restraining the continued uninterrupted disposal of solid waste generated in the Borough at Kinsley Landfill until 1988, or until the County's resource recovery facility is operational. hereby repeated and realleged as if fully set forth herein.

2. The Borough is a party to a contract with Kinsley for a period of five years commencing October 1, 1981 and ending September 30, 1986, providing for disposal

of Type No. 10 solid waste generated in the Borough at Kinsley Landfill at a base rate of $2.00 per cubic yard.

3. Pursuant to said contract, the Borough has been disposing of all of its solid waste at Kinsley from the inception of said contract to the present time for the consideration of $2.00 per cubic yard plus additional tipping fees for which the Borough was obligated under said agreement, currently in the amount of $.28 per cubic yard.

4. Said contract was entered into between the Borough and Kinsley in accordance with the provisions and parameters of the Gloucester County Solid Waste Management Plan, adopted by the County and approved by the DEP.

5. The Borough has relied upon the terms of said contract and upon the provi-

sions of the Gloucester County Solid Waste Management Plan in determining its capital equipment needs for collection and disposal of solid waste, its operating expense and manpower requirements for solid waste collection and disposal purposes, its capital budget, debt service, and other long range planning requirements in connection with solid waste collection and disposal services. The Borough has also relied upon said contract and said Plan in determining the availability of resources and funds for establishing and implementing the rendering of other municipal services in the Borough of Glassboro.

6. The imposition of any substantial increase in the cost (including capital outlay, debt service and operating expenses) without sufficient lead time to allow for a major rearrangement and reallocation

of resources available to the Borough in fulfilling its obligation to provide municipal service to its residents, would result in substantial, immediate and irreparable harm to the health, safety and welfare of the Borough and its residents.

7. The Borough has received official notice from Kinsley that the Kinsley Landfill will be closed in the immediate future. (See Exhibit A) In light of the County's refusal to approve expansion (if such approval is necessary), and DEP's inaction to review and approve expansion plans, such closing is imminent.

8. If such closure of the Kinsley Landfill does occur in the immediate future, the Borough will have no reasonable and viable alternative site available to it for the disposal of solid waste generated in the Borough.

9. Upon information and belief, the County purports to be negotiating with the operator of a landfill somewhere in Pennsylvania, allegedly 75 miles distant from Gloucester County. It is questionable whether the County will be able to obtain permission for disposal of solid waste generated in the County at said landfill. If it does, upon information and belief, the dumping fees will be $10 to $12 per cubic yard initially, with escalation provisions as time goes on.

10. In order to provide for the disposal of Gloucester County solid waste at the facility mentioned in the preceding paragraph or any similarly situated facility, the County would be required to initiate a comprehensive study, data collection process, hearing process, etc., in accordance with the applicable provi-

sions of the Solid Waste Management Act, to be able to consider an amendment to the existing Gloucester County Solid Waste Management Plan to permit disposal at such a site. Such a process would require detailed evaluation and consideration of the transportation patterns, the economic impact upon the municipal governments affected, etc., before approval of such an amendment could even be considered. If adopted, such amendment would require submission to, consideration by, and approved by the DEP.

11. Therefore, even if such an amendment were feasible (which is denied), the time requirements for the evaluation, approval and certification process would, of necessity, result in a discontinuation of solid waste disposal availability to the Borough.

12. A proposal such as that described in Paragraph 9 above would be totally unfeasible and impossible to comply with by the Borough. The reasons include the following:

(a) The Borough now operates two trash trucks (25 cubic yard capacities) and one open truck for disposal of loose and bulky items. Considering the round trip travel time involved to a distant landfill, it is estimated that the Borough would be required to purchase three or four new trucks, with capacities in the range of 32 to 35 cubic yards.

(b) When the County finally completes construction of its resource recovery facility, the Borough would then be left with surplus trash trucks that it no longer needs.

(c) The Borough would have to hire substantial additional manpower to operate these additional trucks.

(d) The dumping fees alone would multiply five to six-fold above Kinsley's rates, at the outset, with escalation clauses.

(e) It is not yet determined whether the Borough possesses the legal authority to transport solid waste in interstate commerce.

(f) In snowy or icy weather, transportation of waste would have to be suspended, or would be extremely hazardous.

(g) The transportation costs, including fuel, wear and tear on the trucks, tolls, etc., would be extremely high.

(h) In addition to the capital outlay and/or debt service to be incurred for purchasing the required new capital equipment, the operating expenses for solid

waste disposal to be incurred by the Borough would, based upon preliminary estimates, escalate from its current figure of less than $100,000 per year to as much as $1,000,000 per year.

(i) Even if the Borough could meet such additional financial requirements for solid waste disposal, the results would necessitate a severe curtailment of other municipal services which are vital to the public health, safety and welfare.

13. Therefore, such an immediate substantial financial burden imposed upon the Borough would substantially impair the health, safety and welfare of the Borough and its residents, either as a result of inadequate solid waste disposal services or curtailment of other vital municipal services.

14. Such detriment to the Borough would be the result of the reliance by the

Borough upon the aforementioned contract between the Borough and Kinsley which was entered into in compliance with and in reliance upon the Gloucester County Solid Waste Management Plan which was adopted by the County and approved by the DEP.

15. As a result of such detrimental reliance, the County and DEP are estopped from depriving the Borough of the continued utilization of Kinsley Landfill for solid waste disposal services until such time as the County and DEP provide the Borough with a reasonable and viable alternative method of disposing of its solid waste.

Wherefore, Plaintiff Borough of Glassboro demands judgment against Defendants County, DEP and Kinsley as follows:

(A) Determining and declaring that said Defendants are estopped from denying

the Borough access to the Kinsley Landfill for solid waste disposal services, at the current contract rate between the Borough and Kinsley for the duration of said contract, and until such time as the County and DEP provide the Borough with a reasonable and viable alternative method of disposing of its solid waste.

(B) Enjoining and restraining said defendants from taking any action which would deprive the Borough of disposing of its solid waste at Kinsley Landfill pending the final outcome of this action.

(C) Enjoining and restraining said Defendants from taking any action which would deprive the Borough of the continued and uninterrupted use of the Kinsley Landfill, at current contract rates, until such time as the County and DEP provided the Borough with a viable and reasonable

alternative for disposal of its solid waste.

FIFTH COUNT

1. Plaintiff repeats and realleges all of the allegations of the Fourth Count as if fully set forth herein.

2. If approval by the County and/or DEP is required for the expansion of the Kinsley Landfill, the County and DEP are estopped from denying Kinsley's application for expansion, at least to the extent that such expansion is required to provide the Borough with solid waste disposal capacity until a reasonable and viable alternative means of disposal is adopted, approved and available.

WHEREFORE, Plaintiff Borough of Glassboro demands judgment against Defendants County, DEP and Kinsley as follows:

(A) Determining and declaring that said Defendants are estopped from denying any application for expansion, if required, of the present Kinsley Landfill site until at least such time as a reasonable and viable alternative is approved and operational.

(B) Enjoining and restraining such Defendants from taking any action to deny expansion which would deny the Borough of disposing of its solid waste at Kinsley Landfill pending the final outcome of this action.

(C) Enjoining and restraining Defendants from taking any action denying approval for such expansion which would deprive the Borough of continued and uninterrupted use of the Kinsley Landfill until such time as the County and DEP provide the Borough with a viable and reasonable alternative for disposal of its solid waste.

SIXTH COUNT

1. Plaintiff repeats and realleges Paragraph 1 through 9 and Paragraphs 12 and 13 of the First Count as if fully set forth herein.

2. If it is determined that the proposed expansion of its existing facility by Kinsley was not already authorized and required by the existing County Solid Waste Management Plan, the denial of such request for expansion approval by the County was unreasonable, arbitrary and capricious for the following reasons:

(a) The County failed to make findings of facts and conclusions upon which to base its denial;

(b) The record is deficient of sufficient facts to reasonably support a denial of the application;

(c) The action by the County was contrary to the recommendation of the

Gloucester County Solid Waste Advisory Council, and without due regard to the findings, report and recommendation of said Council;

(d) The action by the County was contrary to the recommendation of nearly every municipality in the County which went on record, in writing, with the County prior to its action in favor of expansion of Kinsley. (The only municipality which went on record in opposition was the host municipality of Deptford Township which, although opposing expansion approval for the entire 188 acre site, recognized that some shorter term expansion would be appropriate and resolved, inter alia that "any expansion granted to Kinsley Landfill should be calculated so that such expansion would not exceed one (1) year, leaving the Freeholder Board the discretion to grant or

deny a further expansion at that time and each year thereafter.")

(e) The County failed to give due consideration to the severe economic impact upon the Borough and other municipalities throughout the County.

(f) The County failed to give due regard to the severe adverse impact upon the health, safety and welfare of residents of the Borough and throughout the County;

(g) The County failed to provide a reasonable and viable alternative means of disposing solid waste generated in the Borough and throughout the County in the event of the closure of Kinsley Landfill;

(h) The County has failed to correct the many deficiencies which have been cited by the DEP in the County Solid Waste Management Plan;

(i) The County has failed to implement the portions of its Plan which

have been approved in a timely and diligent manner;

(j) The action of the County was improper for other miscellaneous reasons.

WHEREFORE, if it is determined that approval for expansion by Kinsley was necessary, then the Borough of Glassboro hereby demands judgment against Defendants County, DEP and Kinsley as follows:

(A) Determining and declaring that the action of the County in denying said expansion application, at least to the extent necessary to provide continued capacity until such time as the County's resource recovery facility is operational, was unreasonable, arbitrary and capricious, void and of no effect;

(B) Ordering the County to approve the expansion application of Kinsley, at least to the extent required to provide suf-

ficient capacity until such time as the County's resource recovery facility is operational;

(C) Enjoining and restraining said defendants from depriving the Borough of continued and uninterrupted use of the Kinsley Landfill for solid waste disposal services until the final outcome of this action;

(D) Enjoining and restraining said defendants from any action which would prohibit the Borough from disposing of its solid waste at Kinsley Landfill at least until such time as the County's resource recovery facility is operational.

(E) Compelling the DEP to immediately undertake its review process, to diligently expedite said process, and to approve the expansion application of Kinsley, at least to the extent required to provide solid

waste disposal capability to the Borough until such time as the County's resource recovery facility is operational.

SEVENTH COUNT

1. Plaintiff hereby repeats and realleges Paragraphs 1 through 13 of the First Count as if fully set forth herein.

2. As a result of the adoption by the County and approval by the DEP of the Gloucester County Solid Waste Management Plan, and the operation by Kinsley pursuant to said plan, an implied contract exists between the County/DEP and Kinsley providing for the continued operation of the Kinsley landfill until 1988.

3. The Borough is a third party beneficiary of the aforementioned contract and, as such, is entitled to continue disposing of its solid waste at the Kinsley landfill until 1988.

WHEREFORE, plaintiff Borough of Glassboro demands judgment against defendants, County, DEP and Kinsley as follows:

(A) Declaring and determining that an implied contract between the County/DEP and Kinsley exists providing for approval for continued utilization of the Kinsley landfill for solid waste disposal through 1988.

(B) Declaring and determining that the Borough is a third party beneficiary of the aforementioned contract.

(C) Compelling specific performance of said contract by said defendants.

(D) Enjoining and restraining said defendants from taking any action which would deprive the Borough of the continued and uninterrupted use of Kinsley landfill for solid waste disposal services pending the final outcome of this action.

(E) Enjoining and restraining said defendants from taking any action which would prohibit the Borough from utilizing Kinsley landfill for solid waste disposal services through 1988.

EIGHTH COUNT

1. Plaintiff hereby repeats and realleges Paragraphs 1 through 9, and 12 and 13 of the First Count as if fully set forth herein.

2. Pursuant to its rule making authority, the DEP has issued flow orders which have directed solid waste flow from outside Gloucester County into the Kinsley landfill. Such orders include substantial amounts of flow from the City of Philadelphia, the County of Camden, and other areas throughout the State of New Jersey.

3. While issuing said flow orders, the DEP has not taken corresponding steps

to provide limitations or other controls upon such out-of-county flow in order to prevent the acceleration of filling up and exhausting the capacity of the Kinsley landfill at a rate greater than that anticipated when the plan was formulated, adopted and approved.

4. As a result, if it is determined that the plan does not already allow and require expansion, at least to the extent required to permit utilization until 1988 or until completion of the County resource recovery facility, the said action of the DEP in issuing said flow orders has rendered the plan unworkable.

WHEREFORE, if it is determined that expansion is not already permitted and required by the existing plan, Plaintiff Borough of Glassboro demands judgment against defendants DEP, County and Kinsley as follows:

(A) Compelling DEP to immediately review and expedite approval of Kinsley's expansion plans, at least to the extent necessary to render the plan workable, by providing sufficient capacity through 1988, in light of the flow orders which have been issued by DEP.

(B) Enjoining and restraining any of said defendants from taking any action which would prohibit the Borough from continued and uninterrupted use of Kinsley landfill for solid waste disposal services pending the final outcome of this action.

(C) Enjoining and restraining said defendants from taking any action which would prohibit the Borough's continued and uninterrupted use of Kinsley landfill for solid waste disposal services through 1988 or until such time as the County resource recovery facility is operational.

NINTH COUNT

1. Plaintiff hereby repeats and realleges all of the allegations of the Eighth Count as if fully set forth herein.

2. The certification and modifications to the plan by DEP and the flow orders issued by DEP require inter district contracts between County and other districts whose solid waste is disposed of at Kinsley, including the City of Philadelphia.

3. Such requirements have been imposed at least as early as September 26, 1980, as therein contained in the certification of approval with modification of the original Gloucester County Solid Waste Management Plan by then Commissioner Jerry Fitzgerald English.

4. Notwithstanding the existence of said requirement for more than four years,

no such interdistrict agreement has been entered into between the County and the City of Philadelphia.

5. The imposition by the DEP of such a requirement upon the City of Philadelphia applies equally to said City of Philadelphia and to other districts in the State of New Jersey, and therefore is not discriminatory against an out-of-state entity.

6. The failure to achieve said inter-district agreement substantially impairs the Plan in that it results in a lack of control over the the waste generated in the City of Philadelphia and being disposed of at Kinsley, in the same manner and to the same extent as waste from within the County is controlled pursuant to said Plan.

7. Upon information and belief, the City of Philadelphia has failed and refused

to negotiate with the County in good faith towards the consumation of such an inter-district agreement.

WHEREFORE, Plaintiff, Borough of Glassboro demands judgment against Defendants County, DEP, Kinsley and City of Philadelphia as follows:

(A) Enjoining and restraining the City of Philadelphia from disposing of solid waste in the Kinsley Landfill until at least such time as the said City of Philadelphia does negotiate in good faith and enter into a reasonable interdistrict agreement with the County concerning the use of Kinsley Landfill by the said City of Philadelphia, in accordance with the goals, purposes and parameters of the Gloucester County Solid Waste Management Plan.

(B) Enjoining and restraining Defendants DEP, County and Kinsley from

taking any action which would prohibit the Borough from its continued and uninterrupted use of the Kinsley Landfill for solid waste disposal services pending final outcome of this action.

(C) Compelling the County and DEP to revise the Gloucester County Solid Waste Management Plan to reflect any necessary adjustment in capacity at Kinsley Landfill based upon the terms of said interdistrict agreement.

(D) Enjoining and restraining Defendants DEP, County and Kinsley from taking any action which would prohibit the continued and uninterrupted use of Kinsley Landfill by the Borough until such plan revision.

TENTH COUNT

1. Plaintiff hereby repeats and realleges all of the allegations of the Eighth Count as if fully set herein.

2. The certification and modifications to the Plan by DEP and the flow orders issued by DEP require interdistrict contracts between County and other districts whose solid waste is disposed of at Kinsley, including the County of Camden.

3. Such requirements have been imposed at least as early as September 26, 1980, as therein contained in the certification of approval with modification of the original Gloucester County Solid Waste Management Plan by then Commissioner Jerry Fitzgerald English.

4. Notwithstanding the existence of said requirement for more than four years, no such interdistrict agreement has been entered into between the County and the County of Camden.

5. The failure to achieve said interdistrict agreement substantially impairs

the Plan in that it results in a lack of control over the waste generated in the County of Camden and being disposed of at Kinsley, in the same manner and to the same extent as waste from within the County is controlled pursuant to said Plan.

6. Upon information and belief, the County of Camden has failed and refused to negotiate with the County in good faith towards the consumation of such inter-district agreement.

WHEREFORE, Plaintiff Borough of Glassboro demands judgment against Defendants County, DEP, Kinsley and County of Camden as follows:

(A) Enjoining and restraining the County of Camden from disposing of solid waste in the Kinsley Landfill until at least such time as the said County of Camden does negotiate in good faith and

enter into a reasonable interdistrict agreement with the County concerning the use of Kinsley Landfill by the said City of Camden, in accordance with the goals, purposes and parameters of the Gloucester County Solid Waste Management Plan.

(B) Enjoining and restraining Defendants DEP, County and Kinsley from taking any action which would prohibit the Borough from its continued and uninterrupted use of the Kinsley Landfill for solid waste disposal services pending final outcome of this action.

(C) Compelling the County and DEP to revise the Gloucester County Solid Waste Management Plan to reflect any necessary adjustment in capacity at Kinsley Landfill based upon the terms of said interdistrict agreement.

(D) Enjoining and restraining Defendants DEP, County and Kinsley from

taking any action which would prohibit the continued and uninterrupted use of Kinsley Landfill by the Borough until such Plan revision.

Joseph F. Lisa
Attorney for Defendant
Borough of Glassboro

Dated: October 17, 1984.

October 11, 1984

Borough of Glassboro
Municipal Building
Glassboro, N.J. 08028

Gentlemen:

We regret to inform you that the Gloucester County Board of Chosen Freeholders on September 24, 1984 inexplicably refused to approve the expansion of our landfill. This action was taken even though the County's Solid Waste Advisory Council recommended the ten-year expansion that we had sought since the landfill is reaching its approved design capacity as determined by the New Jersey DEP.

Running out of approved space means we will no longer be able to accept your waste. We hereby are notifying you pursuant to paragraph 13 of our agreement that we are terminating that agreement. Our engineers have estimated, based upon anticipated volume, that the approved design capacity will be reached during the week of October 28, 1984. We will continue to take your waste as long as we can, but you should plan for switching to another facility on relatively short notice since we cannot at this point give you the exact date when capacity will be reached.

Very truly yours,

KINSLEY'S LANDFILL, INC.

By: /s/ Charles J. McMuillin
Charles J. McMullin,
President.

CJM/amw
CERTIFIED MAIL, R.R.R.

VERIFICATION

STATE OF NEW JERSEY :

COUNTY OF GLOUCESTER : SS

WILLIAM L. DALTON, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Mayor of the Borough of Glassboro, the Plaintiff in the within action.

2. I have read the foregoing complaint, and on my own personal knowledge, I know that the facts set forth therein are true and they are incorporated in this affidavit by reference.

/s/ William L. Dalton
William L. Dalton

Sworn to and subscribed
before me this 17th day of October, 1984.

/s/ Doris H. Dorofee
DORIS H. DOROFEE
NOTARY PUBLIC OF NEW JERSEY

CERTIFICATION

STATE OF NEW JERSEY

COUNTY OF GLOUCESTER

I, Richard Peluso, do, under penalty of perjury, hereby certify and affirm that the following statements are true to the best of my information, knowledge, and belief:

1. I am a principal in the firm of Wehran Engineering which firm has been responsible for preparing the design drawings for the Kinsley's Landfill, Inc. located in Deptford Township, New Jersey ("Kinsley's"). I am familiar with the design approved for the facility by the New Jersey Department of Environmental Protection ("DEP"). I am a professional engineer licensed in New Jersey and New York, and have had considerable experience in designing sanitary landfills and preparing environmental safeguards for such facilities.

2. Wehran Engineering prepared the drawings for the engineering design of Kinsley's which were approved by the DEP when it issued to Kinsley's a Certificate of Approved Registration and Engineering Design, approved on September 24, 1980.

3. The current plans for a part of th expansion of Kinsley's call for a lateral expansion into virgin ground. The construction time for such lateral expansion would be approximately nine (9) month before such area could be filled, provided construction begin now.

4. In order to continue to use the Kinsley's facility immediately, the only area that can be used is the top of the existing landfill area. This area is approximately sixty-nine (69) acres in size.

5. The minimum practical operational unit is a lift which consists of twelve (12) feet of compacted solid waste.

6. A twelve (12) foot lift equals an in place volume of 1,336,000 cubic yards, which is approximately 3,000,000 truck cubic yards, which is sufficient for about six (6) months more use of the facility. This will result in an elevation of approximately 180 feet; the approved design height is 165 feet.

7. The landfill was designed to insure proper stability up to a height of 230 feet. Therefore, raising the existing elevation of 164 feet, by 16 feet to an elevation of 180 feet, will not have any impact on the stability of the landfill.

8. The existing storm drainage and leachate management systems are capable of handling this additional volume.

9. The operation for this one lift will, in my opinion, be relatively expensive as a new cap will have to be

constructed over the entire area, and the landfill gas system will also have to be reconstructed, thus necessitating an application to the Board of Public Utilities for emergency rate relief.

/s/ Richard Peluso
Richard Peluso

Dated: October 18, 1984

BOROUGH OF GLASSBORO, a Municipal Corporation of the State of New Jersey	SUPERIOR COURT OF NEW JERSEY LAW DIVISION GLOUCESTER COUNTY
Plaintiff,	DOCKET NO.
vs.	Civil Action
GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, KINSLEY LANDFILL, INC., THE CITY OF PHILADELPHIA and THE COUNTY OF CAMDEN,	ANSWER OF DEFENDANT, CITY OF PHILADEPHIA
Defendants.	

Defendant, City of Philadelphia, by way of Answer to the Complaint of plaintiff, says:

FIRST THROUGH EIGHTH AND TENTH COUNTS

As no relief is requested against answering defendant in these Counts, no responsive pleadings thereto are required.

NINTH COUNT

1. Answering defendant responds to the paragraphs of the Eighth Count incorporated in this paragraph as follows:

1. Answering defendant responds to the paragraphs of the First Count incorporated in this paragraph as follows:

1.-9. Admitted.

12. Denied.

13. To the extent the factual allegations of this paragraph can be construed to pertain to answering defendant, it is denied; the remainder of this paragraph is denied as a conclusion of law.

2. Admitted.

3. Denied.

4. Denied.

2. Denied as stated. It is admitted only that the DEP as of July 26, 1983, has specificially directed that Gloucester County enter into such a contract with the

City of Philadelphia. The allegation that the City is a "district" is denied as a conclusion of law to which no responsive pleading is necessary.

3. Denied.

4. Denied as stated. It is admitted only that no formal inter-district agreement has been entered into between the County and the City, although an agreement in principle was reached between the parties in August, 1984.

5. Denied as a conclusion of law to which no responsive pleading is necessary.

6. Denied.

7. Denied.

WHEREFORE, answering defendant demands judgment dismissing plaintiff's Complaint and awarding us the costs and counsel fees incurred in defense of this action.

SEPARATE DEFENSES

1. The Complaint fails to state a claim against answering defendant upon which relief can be granted.

2. Plaintiff lacks standing to assert the claims asserted against answering defendant.

3. This Court lacks subject matter jurisdiction over the claims asserted against answering defendant allegedly arising from a violation of DEP rules and regulations.

4. Granting of the relief sought against answering defendant would violate the Commerce Clause of the United States Constitution.

5. The assertion of plaintiff's claims against answering defendant are barred by the doctrines of laches, waiver, estoppel and unclean hands.

6. Answering defendant has at all times negotiated in good faith with the County of Gloucester.

7. While no formal agreement has been consummated, answering defendant has reached an agreement in principle with the County of Gloucester regarding its waste flow into Kinsley Landfill.

8. The failure to conclude a formal waste flow agreement between answering defendant and the County of Gloucester was the result of the bad faith, obdurate behavior and unreasonable and unconstitutional demands of the County of Gloucester in the course of negotiations.

TOMAR, PARKS, SELIGER, SIMONOFF, & ADOURIAN
Attorneys for Defendant, City of Philadelphia

By: Steven K. Kudatsky /s/
STEVEN K. KUDATSKY

Dated: 10/22/84

CERTIFICATE OF SERVICE

I hereby certify that the original and two copies of the within Answer of Defendant, City of Philadelphia, has been filed with the Honorable Samuel G. DeSimone at the Gloucester County Superior Court in Woodbury, New Jersey by hand-delivery, this date. I further certify that one copy of the aforesaid was served upon all counsel by hand delivery, this date.

Steven Kudatsky /s/
STEVEN KUDATSKY

Dated: October 23, 1984

SUPERIOR COURT OF NEW JERSEY
GLOUCESTER COUNTY - LAW DIVISION
DOCKET NO. L-070476-84 PW

BOROUGH OF GLASSBORO, a municipal corporation of the State of New Jersey, et als,	:	
Plaintiffs,	:	STENOGRAPHIC TRANSCRIPT
vs.	:	of Decision
GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, KINSLEY LANDFILL, INC., THE CITY OF PHILADELPHIA and THE COUNTY OF CAMDEN,	:	
Defendants.	:	

PLACE: Gloucester County Courthouse
Woodbury, New Jersey

DATE: November 15, 1984

B E F O R E:

HONORABLE SAMUEL G. DeSIMONE, AJSC

A P P E A R A N C E S:

JOSEPH F. LISA, ESQUIRE
Attorney for Glassboro, Clayton and Monroe

HOFFMAN, DiMUZIO & HOFFMAN, ESQUIRE
BY: JOSEPH J. HOFFMAN, JR., ESUQIRE
Attorney for Franklin Township

WALTER L. MARSHALL, ESQUIRE
Attorney for Wenonah and Westville

THE COURT: Gentlemen, I have considered this emergent application. This Court, as I stated earlier because of the multitude and complexity of this particular problem, this awesome decision which this Court has to make in regard to this crisis that has been lingering now for the several weeks that this matter has been before the Court, has conscientiously considered the arguments of all counsel in regard to this matter. I have allowed Mr. Kudatsky to produce engineering testimony. As the Court stated on the record and I will reiterate, that I was concerned about the slope's stability in regard to any additional lifts.

In regard to presently what's before me, I have considered the application. I concluded the testimony of Mr. Steiner. I have also considered the testimony that was

before this Court prior hereto. I cannot ignore Mr. Burshtin's testimony. One lift ordered by the Court two day's ago, as Mr. Schneider pointed out, incidental to the order of the closing of Kinsley requires a safety net. I think that was the term that he alluded to.

I reviewed Mr. Burshtin's testimony in regard to the first hearing before this Court, which I believe was on October 26. I was tremendously impressed with Mr. Burshtin's testimony. The original design of the landfill, as he testified according to my recollection, went up to 230 feet. He had many questions concerning even a small expansion. His testimony as I recall it, and I am alluding to Mr. Burshtin, the expert produced by DEP, that the design up to 230 feet was never evaluated. He had many questions on this design, that is, of

going higher. He had questions even in regard to a small expansion at that time. He had questions in regard to slope stability; and if I recall correctly, he alluded to some problems in a Northern landfill, I believe, concerning slope stability. He alluded to the major North Jersey problem or Northern problem as he called it. And I want to emphasize to all of you gentlemen, ladies and gentlemen in these proceedings, Kinsley Landfill is no longer operating as a landfill, as a private landfill; it is operating on an emergent basis pursuant to a Court Order and DEP approval of the minimal of a one lift expansion.

This litigation has not concluded. This Court has entered a preliminary injunction as to Philadelphia disposal of solid waste. My former opinion was based upon a fine tune inter-dependent happening of events to

insure the orderly closure of Kinsley Landfill. To undo it now as the facts stand before me today and as they stood before me prior hereto would be catastrophic.

I have considered the testimony of Mr. Lou Steiner today as to an additional life but I am persuaded by the concerns espoused by Mr. Burshtin. And under our laws and under our rules as I understand it, it is up to me as the trier of fact as to what weight I give to experts' testimony. Although the law, as I understand it, gives me great liberality that is afforded experts, it is up to me. I can accept parts; accept it all; reject parts; accept parts. And again I will state for the record, that I was persuaded by his concerns, and that was Mr. Burshtin, in re slope stability of the Kinsley Landfill.

will accept his one lift, approval of the one lift.

Again, in balancing the equities, this Court has chosen a path which would subject the citizens to the least amount of risk during this emergent situation. For those reasons, I deny your request Mr. Kudatsky. I exercise my discretion, no bond is to be posted by the municipalities or county involved under the rules alluded to by Mr. Kudatsky, the bond on appeal. This is done within the sound discretion of the Court to my knowledge and I can take note that all the municipalities are before me as well as the County of Gloucester are solvent.

In addition thereto Mr. Kudatsky, again I will re-emphasize for the record that you have the right to make an application to me for prompt emergent case management if you so desire. This Court is extremely busy.

However, I wear two hats. I am not only Assignment Judge for Gloucester, Cumberland and Salem County; I am also Civil Assignment Judge for Gloucester and Salem County; so the buck stops here. In regard to case management, you can make your request directly to me and I will take it under advisement.

For those reasons gentlemen, Mr. Kudatsky, I deny your request today. Mr. Lisa, again, I will call upon you to prepare an order and submit it to me.

REPORT OF A TIMETABLE FOR THE ORDERLY CLOSURE OF KINSLEY LANDFILL AND WASTE FLOW REDIRECTIONS RELATIVE THERETO

Prepared By: New Jersey Department of
Environmental Protection,
Division of Waste Management

INTRODUCTION

This report is prepared pursuant to a temporary restraining order entered by the Honorable Samuel G. DeSimone, A.J.S.C. on October 26, 1984 in the matter of Borough of Glassboro v. Gloucester County Bd. of Chosen Freeholders, et al.

The temporary restraining order contemplates that the court will order that the Kinsley Landfill be expanded vertically for one additional lift of compacted solid waste. Accordingly, Kinsley was ordered to submit to the Department of Environmental Protection complete engineering designs for such an expansion. DEP's review of the engineering designs is the subject of another report submitted to the court. That report does indicate that from an environmental point of view, it is possible for there to be a vertical expansion of the

Kinsley Landfill for one additional lift of compacted solid waste, which expansion could be conducted in a manner which complies with applicable engineering criteria. Since DEP understands that in light of its review of the engineering design the court will order that the Kinsley landfill stay open until this expanded capacity is reached, it has prepared this report

At present there is a critical shortage of solid waste disposal facilities in the State of New Jersey which has reached a crisis stage. There are very few operating landfills remaining in the State of New Jersey, and may of those that are remaining are rapidly running out of disposal capacity. At present, there are few proposals for additional landfills that have even reached the planning stage, and no additional landfills are presently under

construction. A similar situation exists for resource recovery facilities. Resource recovery facilities are essential for a long-term solution to New Jersey's solid waste disposal crisis.

PRESENT WASTE FLOW REDIRECTION ALTERNATIVES

DEP has examined the alternative solid waste disposal sites in the State of New Jersey. As set in Exhibit A annexed hereto, DEP concludes that at present there are in fact no alternative sites in the State of New Jersey to which it would be feasible to redirect the waste flows presently disposed of at the Kinsley Landfill. With respect to sewerage sludge, such sludge is already required to cease landfill disposal by March 15, 1985 pursuant to statute and regulations.

IMMEDIATE SITING OF NEW LANDFILLS

Due to the present absence of acceptable

alternative landfill facilities located in the State of New Jersey, it is essential that additional landfill sites be implemented on as expeditious a schedule as is possible. At present most of the waste generated in the State of New Jersey which is disposed of at the Kinsley Landfill (a minority of the total waste flow to the landfill) comes from the counties of Camden and Gloucester and, to a lesser extent Salem. In order to provide for alternative in-state disposal sites when the expanded Kinsley Landfill reaches capacity, these three counties must be required to immediately site and implement landfills within their borders.

The implementation of new landfills by Camden, Gloucester, and Salem Counties must be done on an expedited schedule. This may require that the counties

proceed simultaneously with steps which would ordinarily proceed sequentially. However, any plan for the orderly closure of the Kinsley Landfill must require these counties to immediately implement alternative landfills. Attached hereto as Exhibits B and C are proposed Administrative Consent Orders for Camden and Gloucester counties which provide for the expeditious implementation of landfills, as well as timetables for implementation of resource recovery in order to provide a long-term solution to solid waste disposal needs in these counties.

Due to the complexity of implementing a landfill, and in particular the procedures attendant upon issuance of an approved registration (permit), this process ordinarily requires at least 24 months. However, where necessary in order to comply

with a judicial decree and to prevent disruption in the operation of a solid waste management plan, a facility may be temporarily exempted from the requirement of an approved registration pursuant to N.J.A.C.7:26-1.7, and may operate pursuant to a temporary certificate of authority. If this approach is followed in this case, the new landfills could be operational within 12 months.

PHILADELPHIA WASTE FLOWS

Unfortunately, DEP review indicates that at present rates of waste disposal at the Kinsley Landfill, the capacity of one new lift might be reached in less than four months. Waste generated within the City of Philadelphia and other Pennsylvania communities accounts for the majority of the waste disposed of at the Kinsley Landfill. Accordingly if Kinsley Landfill ceased

accepting this waste, it is projected that the capacity of the expanded landfill would not be reached for approximately one year.

Again we note the critical shortage of landfill disposal space within the State of New Jersy. Protection of the public health, safety and welfare presents an urgent need to preserve this limited space so that it will be possible to provide some place for the disposal of solid waste generated within this State until long-term solutions to this waste disposal crisis are implemented.

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., provides a scheme for regulating waste disposal in the State of New Jersey. Each of the 21 New Jersey counties and the Hackensack Meadowlands district is designated a solid waste management district. Pursuant to that Act and

DEP's implementation thereof, no waste generated outside of a solid waste management district may be disposed of within that district except in accordance with an interdistrict agreement between said district and the jurisdiction where the waste is generated. This requirement applies uniformly and without distinction between wastes generated within the State of New Jersey and wastes generated outside the State. To date, there is no agreement between the City of Philadelphia or any other Pennsylvania Community and the County of Gloucester. The counties of Camden and Salem have reached such agreements. DEP accepts the representations of Gloucester County that it has negotiated in good faith.

DEP understands that Philadelphia has stated it can accommodate the closure of Kinsley Landfill.

Accordingly, given all of these circumstances, it is proposed that within two weeks Kinsley Landfill must cease accepting all solid waste generated within the City of Philadelphia and other Pennsylvania communities. Without this waste, the one lift expansion at the Kinsley Landfill should have sufficient capacity to allow time for the landfill facilities to come on line.

WASTE FLOW REDUCTIONS THROUGH RECYCLING

Finally, in order to maximize the capacity in the expanded Kinsley Landfill, all communities using the landfill must be required to substantially increase their recycling efforts. Accordingly, all plaintiff municipalities should be directed to report to the court within two weeks with plans they are implementing to further maximize recycling. Those municipalities which do not presently provide curbside

pickup of recyclables must provide same or set forth a compelling reason for their failure to do so. Similarly, municipalities which do not have mandatory recycling ordinances must do likewise.

Municipalities which do have curbside pickup and/or mandatory ordinances must increase efforts at public awareness and enforcement. Communities in Camden County which use the Kinsley Landfill should be required to do likewise, with Camden County coordinating these efforts. While the additional landfill capacity which may be gained in this manner cannot presently be measured, under the circumstances any further reduction in waste flows to Kinsley Landfill is significant.

CONCLUSION

Accordingly, the Department of Environmental Protection proposes the

following for the orderly closure of the Kinsley Landfill when the vertical expansion of one additional lift of compacted solid waste reaches its capacity, and the waste flow redirections associated therewith:

1. The Counties of Camden, Gloucester, and Salem shall proceed immediately with implementation of one of more landfills within their borders, with such landfills to become operational within 12 months in accordance with Exhibits B and C attached hereto and an order of this court.

2. Within two weeks Kinsley Landfill shall cease accepting all solid waste generated within the City of Philadelphia and other Pennsylvania communities and other out of district solid waste not subject to interdistrict agreements.

3. Within two weeks all municipalities using the Kinsley Landfill shall maximize

their recycling efforts, including curbside pickup, mandatory ordinances, stepped up public awareness campaigns, and increased enforcement efforts, and shall report to the court and the DEP on same.

4. Other wastes presently disposed of at the Kinsley Landfill will be disposed of at the vertical expansion to the Kinsley Landfill until it reaches capacity, at which time said wastes are redirected to the new landfills to be implemented in the Counties of Camden, Gloucester, and Salem.

5. Disposal of sewage sludge at Kinsley landfill shall cease on March 15, 1985.

ANALYSIS OF ALTERNATIVES TO KINSLEY LANDFILL

Salem County: Salem only sends a small amount of waste to Kinsley, but there are no realistic alternatives to Kinsley for this waste. The one BPU regulated facility in the County, the Pennsville Township Landfill (DEP # 1708A), is presently out of capacity, and the Department has initiated closure proceedings. The Township has indicated a desire to expand, but does not accept the need to install environmental improvements. Finally, the facility's BPU tarrif [sic] restricts disposal to Pennsville waste only.

Camden County: Camden has two operating landfills; both have constraints on their ability to accept increased waste loadings.

- Pennsauken Township Landfill, DEP

Exhibit "A"

#0427A, is BPU registered and accepts most non-hazardous waste.[1] The facility has permitted capacity, at present loading rates, for approximately 14 months, but the actual construction of the liner for the facility is conducted in stages, with only a small area being prepared at a time. This procedure was approved by the Department as part of the facility's registration. In addition, Department engineering staff have concerns that the liner sections for these soon-to-be-

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[1] The facility's DEP registration allows all but Type 25, animal and food processing waste; their BPU tarrif prohibits both Type 25 and Type 23, vegetative waste.

utilized sections may or may not have been completed in a manner consistent with the facility's registration. Acceptance of additional waste at this facility would hinder construction of the new liner sections, making uninterrupted access to the facility uncertain, and would shorten the life of the permitted portions to approximately six months. In addition, the facility would be hard pressed to acquire equipment, etc. for a significant increase in waste loadings. Although the County has received Department approval for a plan amendment which would allow an additional 45 acre expansion of this landfill, no engineering plans or permit

materials have yet been filed.

- Winslow Townhip Landfill, DEP # 0436A, is BPU registered and can accept all [non-hazardous] waste types. However, the facility's BPU tarrif [sic] restricts waste acceptance to Winslow Township, Waterford and Chesilhurst, and the fact that the facility is in the Pinelands Preservation area means that additional waste loading must, according to the Pinelands Comprehensive Management Plan [Section 6-794[5]], be restricted to "Pinelands Counties", that is, counties with at least 50% of their land area in the Pinelands. Camden is not a Pinelands county, neither is Gloucester. The facility has capacity for a number of

years for its own relatively small waste stream; signficant [sic] new waste loadings would significantly reduce this expected lifetime.

Burlington County: Burlington has two remaining private landfills,[2] but the Department is strongly opposed to redirection of waste into this county. Burlington has crafted a plan based on the careful metering out of the remaining capacity so that the county is assured of adequate capacity for its own waste until its county-owned landfill is operational. Burlington had agreements with Mercer County, Camden County, and the City of Philadelphia; these called for the importing districts to end their waste

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[2] Parlands, 0304A, and L&D, 0323A.

flows into Burlington in order to ensure this capacity for the county, and all have complied. (Burlington also had similar agreements with a host of private haulers; most have expired, and these haulers are no longer disposing in the county. Two or three haulers are still permitted to dispose in the county under agreement.) The Burlington landfills are environmentally troublesome also. The Department recently moved against Parklands, alleging more than 400 violations of the Departments [sic] regulations and its engineering design. L&D is a Superfund site.

Atlantic County: Most wastes in Atlantic County are disposed of at the Pinelands Park landfill (0108B), which is scheduled to close December 31, 1985.

Cape May County: Cape May recently opened a new county-owned landfill (0511C),

for the exclusive acceptance of the county's waste. Since Cape May generates a relatively small waste stream, and since the landfill only is permitted for use until 1990, when landfilling in the Pinelands must cease, additional waste loadings here would unacceptably reduce this facility's life, and create problems for the county plan. In addition, the Cape May landfill is located in the Pinelands, making additional waste acceptance from non-Pinelands counties difficult or impossible. Also, since the Cape May facility is some 50 miles from Kinsley, it would make as much sense to direct the waste to Colebrookdale as it would to direct it to Cape May, without the associated disruptions to New Jersey county planning activities.

Ocean County: Ocean county has just signed an ACO with the Department which pro-

vides for the same type of metering of in-county capacity (as is contained in the Burlington County Plan) until a resource recovery facility is developed and operational.[3] In addition, Ocean County is at least as far as Colebrookdale, so redirection makes little sense, in the same sense as Cape May, in that disruption to an on-going planning and facility development process would result.

Middlesex County: Closure of one of the two major private landfills (ILR, 1205C) in Middlesex is imminent, and extremely high loadings (close to 1000 trucks per day) at the other (Edgeboro, 1204A) make redirection to this landfill unrealistic.

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[3] Ocean County has two private landfills with significant capacity; Ocean County Landfill Corp., 1518B, and Southern Ocean Landfill, 1520A.

LANDFILL AGREEMENT

THIS AGREEMENT, made this 22nd day of August, 1984, by and between R.R.M. CORPORATION, a Pennsylvania Corporation, t/a COLEBROOKDALE LANDFILL, R.D. #3, Box 607, Boyertown, Pennsylvania 19512 (hereinafter referred to as "landfill")

AND

Gloucester County, New Jersey, and or its designated authority, with its principal place of business at the Court House, Woodbury, New Jersey 08096 (hereinafter referred to as "supplier").

WITNESSETH:

WHEREAS, Landfill operates and maintains a sanitary landfill at Shenkel Hill Road, in Earl Township, Berks County, Commonwealth of Pennsylvania (hereinafter referred to as the "Site"); and

WHEREAS, Supplier has, from time to time, quantities of waste materials

(hereinafter referred to as the "Waste Materials") which Supplier desires to dispose of at the Site, and Landfill is willing to allow Supplier to dispose of its Waste Materials at the Site, in accordance with the terms and conditions set forth hereinbelow.

NOW, THEREFORE, the parties hereto, in consideration of the promises and mutual convenants and agreements herein contained, and intending to be legally bound, hereby agree as follow:

1. Disposal of Waste Materials. Landfill hereby agrees to permit Supplier to dispose of up to ---------- (N/A) cubic yards/ 650 (650) tons per day of Supplier's Waste Materials at the Site, subject to the terms and conditions and limitations set forth herein.

2. Weekly Volume of Waste Materials. Supplier agrees that the Waste Materials to

be disposed of at the Site shall be provided in reasonably uniform weekly volume. The weekly volume of Waste Materials shall not be less than 1,250 (1,250) tons during any thirty (30) day period during the term of this Agreement.

3. Compensation of Landfill.

(a) Supplier shall pay Landfill as compensation for the disposal of the Waste Materials at the Site in accordance with the compensation schedule set forth in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Basic Rate")

(b) In the event that the volume of Waste Materials is not within the minimum range set forth in Paragraph 2 hereinabove during any thirty (30) day period, Supplier agrees to pay to Landfill the basic rate applicable to the minimum quantity of 1,250 tons per week in any event.

(c) Terms of payment under this Agreement are net ten (10) days.

4. Term. The term of this Agreement shall be for the period of four (4) year(s), commencing on the 1st day of September, 1984, and ending on the 31st day of August, 1988.

5. Nature of Waste Materials. The parties hereto understand and agree that the Waste Materials to be disposed of at the Site shall consist solely of the items set forth in Exhibit "B" attached hereto and made a part hereof. Notwithstanding anything herein contained to the contrary, under no circumstances shall Landfill accept or Supplier dispose of any Waste Materials at the Site which constitute "hazardous Waste" as defined in the Pennsylvania Solid Waste Management Act, July 7, 1980, P.L., No. 97, as amended,

and/or any liquid or contained gaseous materials, and/or any other Waste Materials which Landfill, in its sole and exclusive discretion, deems objectionable, obnoxious, noxious, toxic, and/or otherwise environmentally harmful, or which may materially increase hazards or risks to health, or exceed any current or future capacity limit of the Site, cause operating problems at the Site, or adversely affect Landfill's ability to comply with any and all laws, ordinances, rules, regulations, and licenses under which it operates.

6. Landfill Operation. The Site shall be open for business during the hours of 7:00 A.M. to 5:00 P.M., Mondays through Fridays, and 7:00 A.M. to 12:00 noon Saturdays. Any vehicle of Supplier carrying Waste Materials to the Site shall register at the office of Landfill prior to

entering upon any property of Landfill. Landfill shall designate the location at the Site where Supplier's Waste Materials shall be disposed of. Landfill reserves the right to change hours of operations and/or the location where Supplier's Waste Materials shall be disposed of without prior notice to Supplier, if as a result of changes in applicable laws, ordinances, regulations, rules, or licensure. Landfill shall have the right at any time or times to make such rules and regulations as in its judgment maybe necessary for safety, care, cleanliness and for the preservation of good order at the Site. Landfill shall also have the right, in addition to any other rights reserved herein, to required Supplier and/or Supplier's hauler to provide Landfill with evidence, in form satisfactory to landfill, that any load of the

Waste Materials is in compliance with the requirements of Paragraph 5 hereof.

7. Insurance. Landfill agrees to carry necessary insurance coverage with respect to public liability and property damage. Notwithstanding the foregoing, Supplier (and Supplier's hauler) shall also carry satisfactory standard insurance coverage with respect to public liability and property damage and shall, upon request of Landfill, provide Landfill with certificates of such insurance coverage.

8. Indemnity. Supplier (and Supplier's hauler) covenants and agrees to indemnify and hold harmless Landfill, its directors, officers, employees, and agents, from and against any and all liabilities, penalties, fines, demands, claims, causes of action, suits, losses, damages, costs, and expenses (including costs of defense,

settlement, and reasonable attorney fees) which any or all of them may suffer, incur, be responsible for, or pay out, arising out of or resulting from any direct or indirect violation of the terms, covenants, and conditions of this Agreement by Supplier, its directors, officers, employees, hauler or agents, including but not limited to, any of the foregoing arising out of Supplier's disposal of hazardous waste as hereinabove defined at the Site, and/or resulting from any contamination of or adverse effects upon humans, animals, aquatic and wildlife, food, animal feed, land, or water, by reason of Supplier's inclusion in any shipment of Waste Materials to Landfill or any materials or substances not described in Exhibit "B", or otherwise prohibited under Paragraph 5 hereinabove. Upon the request of Landfill, Supplier shall promptly defend

any such demand, claim, cause of action, or suit, and/or make the required payments hereunder. Supplier agrees to and shall take all necessary and appropriate precautions to prevent any such violation, contamination, or adverse effects and any such loss or damage to property or person.

9. Transportation of Waste Materials. Supplier shall transport the Waste Materials to the Site at Supplier's sole risk, cost and expense. Landfill shall have the absolute right to approve of the hauler selected by Supplier to transport the Waste Materials to the Site. Supplier's hauler shall take all necessary and appropriate precautions in the transportation and delivery of Waste Materials to the Site in order to avoid injuries to persons and damage to property. Supplier and its hauler shall give all

required notices and comply with all rules and regulations of Landfill with respect to the Site, and all applicable federal, state, county, township, and local laws, ordinances, rules, regulations, and orders with respect to transportation of the Waste Materials. Trucks carrying Waste Materials to the Site shall be adequately sealed and covered (with tarp or its equivalent) to prevent the Waste Materials from blowing away and/or littering the highways and/or the Site. Any Waste Materials consisting of sludges shall be transported to the Site in leak-proof containers to prevent leakage of sludge upon the highways leading to the Site and/or the Site. Supplier covenants and agrees to indemnify and hold harmless Landfill, its directors, officers, employees, and agents, from and against any and all liabilities, penalties, fines,

demands, claims, cause of action, suits, losses, damages, costs and expenses (including costs of defense, settlement, and reasonable attorneys fees) which any or all of them may suffer, incur, be responsible for, or pay out arising of or resulting from any direct or indirect action or failure to act by any hauler of Supplier, or resulting from any direct or indirect action or failure to at by any hauler of Supplier, or resulting, directly or indirectly, from Supplier's and/or Supplier's hauler's failure to comply with the terms, covenants, and conditions herein. Upon the request of Landfill, Supplier shall promptly defend any such demand, claim, cause of action, or suit, and/or make the required payments hereunder. Supplier and its hauler shall give Landfill prompt notice of any acci-

dent, spill or leakage occurring on or to the Site and/or upon the highways leading to the Site. Landfill reserves the right to bar any hauler, acting on behalf of Supplier, from the Site in the event Landfill, in its sole discretion, determines that such hauler is, or may be, acting or has acted, contrary to the rules and regulations of Landfill with respect to the Site, or otherwise in violation of the terms, covenants, and conditions of this agreement, or that the condition of said hauler's vehicles or performance of said hauler's drivers may pose or present a possible hazard to persons or property at or about the Site.

10. Title to Waste Materials. Except as otherwise provided herein, upon deliver of the Waste Materials by Supplier and/or its hauler to the Site, title to the Waste

Materials shall thereupon rest with and b transferred to Landfill. Notwithstanding the foregoing, in the event that Landfill discovers, after having taken title to the Waste Materials, that the Waste Materials, or any of it, does not conform to the specifications set forth in Exhibit "B" hereto and/or is in violation of the provisions of Paragraph 5 of the Agreement, Landfill may revoke its acceptance of the Waste Materials. In the event of such a revocation of acceptance of the Waste Materials. In the event of such a revocation of acceptance, title to the Waste Materials shall immediately revest in Supplier, and Supplier agrees to and shall be soley responsible and liable for the removal of the Waste Materials from the Site and shall be responsible, answerable, and accountable for any loss, damage, or expense resulting from said non-conformity and/or violation,

including, but not limited to, the cost of removal of the Waste Materials from the Site. Anything in the foregoing paragraph to the contrary notwithstanding, Supplier shall have no liability with regard to, ownership of, Waste materials other than those proven, by competent evidence, to have been deposited at the Site by Supplier and/or its hauler.

11. Landfill's Right to Terminate Agreement. Landfill reserves the right to terminate this Agreement at any time during any term hereof at its sole discretion in the event Supplier and/or Supplier's hauler violates any of the terms, covenants, and conditions hereof; in the event the business of Landfill is discontinued or curtailed at the Site; or in the event Supplier is adjudged a bankrupt, makes a general assignment for the benefits of cre-

ditors, files a petition in bankruptcy or for the appointment of a receiver, or seeking reorganization under any provisions of the Federal Bankruptcy Law or any state insolvency acts.

12. Contingency. Landfill's obligation to perform hereunder is expressly contingent upon landfill's ability to obtain from time to time, from all necessary governmental agencies and bodies, permission and/or approval or permits to use additional grounds of landfill for the disposal of solid waste, as needed from time to time, in connection with landfill's business. This Agreement is further contingent and shall not take effect or continue to be in effect until and unless Kinsley Landfill is not available for use by Supplier.

13. Assignment. This Agreement shall not be assigned in whole or in part by

either party hereto without the written consent of the other party, but with that exception shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

14. Force Majeure. Performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented or made substantially impractical by a cause or causes beyond the reasonable control of the party seeking suspension or excuse of its performance or obligations. Such causes shall include but not be limited to acts of God, acts of war, riot, fire, explosion, accident, sabotage, flood or severe weather condition; lack of adequate fuel, power or raw materials; judicial administration or governmental

laws, regulations, rules, requirements, orders or actions, including cancellations, suspension or revocation or modification of any permit, license, or other authorization necessary to perform pursuant to this Agreement, injunctions or restraining orders; failure of any governmental body to issue or grant licenses, permits, or other authorizations necessary to perform pursuant to this Agreement; national defense requirement; labor, strike or lockout.

15. Governing Law. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and no conditions, uses of trade, courses of dealing or performance, or understandings or agreement pur-

porting to modify, vary, explain, or supplement the terms or conditions hereof shall be binding unless reduced to writing and signed by the parties hereto.

17. Notices. All notices required to be given hereunder shall be in writing and sent certified mail, return receipt requested, to the address set forth at the beginning of this Agreement.

18. Miscellaneous.

(a) In the event Supplier fails to fulfill the terms of payment, set forth hereinabove, or in case Landfill shall have any doubts as to Supplier's financial responsibility, Landfill may decline to accept further deliveries of Waste Materials from Supplier except upon receipt of case or satisfactory security therefor. Landfill may require, from time to time, that Supplier provide Landfill with

appropriate credit references attesting to Supplier's financial responsibility.

(b) Supplier and/or Supplier's hauler shall provide Landfill, upon request, with copies of all necessary governmental licenses, certificates, approvals, permits, or permissions necessary or required for the performance of any and all of Landfill's services hereunder for Supplier.

(c) Supplier shall immediately notify Landfill should any such governmental license, certificate, approval, permit, or permission be suspended, revoked, or impaired in any respect. Any such suspension, revocation, or impairment of same shall confer upon Landfill the immediate unqualified right of termination of this Agreement.

(d) Nothing contained herein shall create a master/servant,

employer/employee, or principal/agent relationship between the parties hereto, and under no circumstances shall Supplier, Supplier's employees or agents and/or Supplier's hauler or hauler's employees be considered the employees, agents, or servants of Landfill at any time, under any circumstances, or for any purpose.

(e) Paragraph headings are inserted for convenience only and shall not constitute a portion of this Agreement nor shall they affect its meaning, construction or effect.

(f) All times stated herein for performance shall be deemed to be of the essence of this Agreement.

(g) This offer by Landfill shall be good for a period of sixty (60) days from the date hereof, unless accepted and a copy hereof shall be delivered by Supplier on or before said date to Landfill.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

R.R.M. CORPORATION

Attest: /s/ Secretary BY: /s/ President

(CORPORATE SEAL) SUPPLIER:

_____

Witness: _____ BY: _____ (SEAL)

SURCHARGE RATE

$ N/A per cubic yard of Waste Materials

$_____ per ton of Waste Materials

BASIC RATE - Effective 10/1/84

Year	A* Price per cu./yd	B* Price/Ton
1	$10.00	$35.00
2	$12.00	$42.00
3	$14.00	$49.00
4	$16.00	$56.00

*whichever is the greater of A or B shall constitute the basic rate (as determined by landfill)

EXHIBIT "A"
COMPENSATION SCHEDULE